

Philosophical Analysis of the Prohibition of Interfaith Marriage from the Perspective of Al-Syatibi's Maqashid Sharia

Analisis Filosofis Terhadap Larangan Perkawinan Antaragama dari Perspektif Maqashid Syariah karya Al-Syatibi

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Abstract

This study examines the prohibition of interfaith marriage, which often sparks legal controversies in Indonesia. The research aims to analyse the philosophical aspects of the prohibition of interfaith marriage from the perspective of Maqashid Shari'ah al-Syatibi. The focus is on elucidating the philosophical aspects of the prohibition as part of Hifzu al-Din (preservation of religion), Nasl (progeny), and Nafs (self/psyche). This study employs a qualitative method with a literature review approach. Data collection was conducted through the exploration of library sources (library research). Data analysis techniques used a descriptive model, starting from data collection, verification, analysis, and drawing conclusions based on the core issues examined within the theoretical framework applied. The findings indicate that the prohibition of interfaith marriage from the perspective of Maqashid Shari'ah al-Syatibi encompasses three essential elements: First, Hifzu al-Din (Preservation of Religion): Interfaith marriage may undermine an individual's faith and damage the integrity of religious teachings. Second, Hifzu al-Nasl (Preservation of Progeny): Interfaith marriage can lead to ambiguity in a child's legal status and inheritance rights. Third, Hifzu al-Nafs (Preservation of Self/Psychological Well-being): Interfaith marriage may negatively affect a child's mental and psychological development in social interactions.

Abstrak

Penelitian ini mengkaji larangan perkawinan beda agama yang sering menimbulkan polemik hukum di Indonesia. Penelitian ini bertujuan untuk menganalisis aspek filosofis larangan perkawinan beda agama perspektif Maqashid Syari'ah al-Syatibi. Fokusnya adalah memamparkan aspek filosofis larangan perkawinan agama sebagai bagian dari Hifzu al-Din, Nasl, dan Nafs. Penelitian ini menggunakan metode kualitatif dengan pendekatan studi literature. Pengumpulan data diperoleh melalui penelusuran sumber data berupa berupa bahan kepustakaan (library research). Teknik Analisis data menggunakan model deskriptif dimulai dari pengumpulan, pengecekan, analisis data serta penarikan kesimpulan berdasarkan pokok persoalan yang dikaji dengan kerangka teoritik yang digunakan. Hasil penelitian menunjukkan bahwa larangan perkawinan beda agama perspektif Maqashid Syari'ah al-Syatibi melahirkan 3 unsur penting: Pertama, Hifzu al-Din/menjaga agama, yaitu perkawinan beda agama akan merusak keyakinan individu dan merusak eksistensi ajaran agama). Kedua, Hifzu al-Nasl (Menjaga Keturunan), bahwa perkawinan beda agama menimbulkan bias status seorang anak dan haknya terhadap waris. Ketiga, Hifzu al-Nafs (Menjaga jiwa/psikologis). Perkawinan beda agama akan berdampak pada mental dan psikologis anak dalam berinteraksi dengan lingkungan masyarakat.

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INTRODUCTION

The phenomenon of interfaith marriage in Indonesia has shown a steady upward trend, with 1,655 couples recorded between 2018 and July 2023.¹ This increase reflects the persistent ambiguity and legal uncertainty in Law Number 1 of 1974 on Marriage, which does not explicitly regulate the permissibility or prohibition of interfaith marriage. Interfaith marriage refers to a marital union between a man and a woman in which each spouse adheres to a different religion. From the perspective of al-Syāṭibī's Maqāshid al-Sharī'ah, the prohibition of interfaith marriage carries a profound philosophical meaning: such marriages threaten the value of faith (Ḥifẓ al-Dīn), undermine the validity of lineage (Ḥifẓ al-Nasl), and disturb the psychological dimension (Ḥifẓ al-Nafs) of couples due to differences in culture, ethnicity, and religion. Consequently, the prohibition of interfaith marriage serves to preserve the existence of a sakīnah family.²

Interfaith marriage continues to provoke controversy in Indonesian society precisely because no positive law explicitly regulates it.³ While the 1974 Marriage Law⁴ and the 1968 Supreme Court Decision⁵ address marriage in general terms, they leave the interfaith dimension unresolved. The Fatwas of the Indonesian Ulema Council (MUI), Muhammadiyah, and Nahdlatul Ulama, employing the method of sadd al-dharī'ah, firmly prohibit interfaith marriages regardless of motive or purpose.⁶ Consequently, interfaith marriage struggles to find legitimate space within both the legal and socio-cultural domains of Indonesian society.

An illustrative case involves a Muslim man (initials RA) who married a woman (initials EDS), a resident of Jember, on 5 March 2022.⁷ After multiple judicial rejections, the marriage was eventually authorised by the Surabaya District Court, invoking Article 8 letter f of the Marriage Law⁸ and Article 28 E paragraph (1) and Article 29 paragraph (2) of the 1945 Constitution.⁹ Yet such practices cannot be separated from their consequences, particularly the threat they pose to family integrity and inheritance rights along the lineage.¹⁰ In response to this prolonged ambiguity, the Supreme Court of the Republic of Indonesia issued Supreme Court Circular Letter (SEMA) No. 2 of 2023 on Guidelines for Adjudicating

¹ Based on data from the Indonesian Conference on Religion and Peace (ICRP), interfaith marriages in Indonesia show a consistent upward trend from 2018 to 2022, with consecutive increases of 10.48% (2018-2019), 3.52% (2019-2020), 7.74% (2020-2021), and 2.32% (2021-2022). Cumulatively, the total number of interfaith couples reached 1,566 by 2022, and increased to 1,655 by July 2023 after the addition of 89 couples that year. This data confirms the significant growth of the interfaith marriage phenomenon in Indonesia over the past five years.

² Abu Ishaq Al-Syathibi, *Al-Muwafaqat Fi Usul Al-Syari'ah* (Beirut: Darul Kutub al-'Ilmiyyah, 2004). Page 221-222.

³ Aulil Amri, "Religious Marriage According to Positive Law and Islamic Law," *Media Syari'ah* 22, no. 1 (May 6, 2020): 48, <https://doi.org/10.22373/jms.v22i1.6719>.

⁴ The 1974 Marriage Law, article 1 states that "Marriage is valid if it is conducted according to the laws of each religion and belief".

⁵ Supreme Court Decision No. 1400 K/Pdt/1986 states that interfaith marriages cannot be implemented in Indonesia because it contradicts Article 2 of the Marriage Law regarding the registration and validity of the marriage itself.

⁶ Ali Mutakin et al., "Indonesian Fiqh of Interfaith Marriage: Study on the NU, MUI, and Muhammadiyah Fatwas," vol. 14, n.d.

⁷ Bobby Constantine Koloway, "Chronology of a Bi-Religious Marriage in Surabaya, Marriage Certificate Issued After Rejected Dispendukcapil," *SuryaMalang.com*, 2022, <https://suryamalang.tribunnews.com/2022/06/22/kronologi-pernikahan-beda-agama-di-surabaya-akta-marriage-certificate-issued-after-rejected-dispendukcapil?page=2>. Accessed on 4 July 2025.

⁸ Article 8 letter f of the Marriage Law reads: "Marriage is prohibited between two people who are related: Brothers, straight line descendants up or down."

⁹ Article 28 E paragraphs 1 and 2 of the 1945 Constitution: Article 1 states "Every person is free to embrace a religion and to worship according to his religion, to choose education and teaching, to choose a job, to choose citizenship, to choose a place of residence in the territory of the state and to leave it, and to have the right to return." Article 29 paragraph 2 states "The state guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and belief."

¹⁰ Fakhrrrazi M. Yunus and Zahratul Aini, "Religious Marriage in Law Number 23/2006 on Population Administration (Islamic Law Review)," *Media Shari'ah* 20, no. 2 (February 28, 2020): 138, <https://doi.org/10.22373/jms.v20i2.6512>.

Applications for the Registration of Interfaith Marriage. This circular marks a decisive turning point, directing all courts to reject such applications and reaffirming Article 2 paragraph (1) of the 1974 Marriage Law as the operative norm. SEMA No. 2 of 2023 closes the judicial space previously opened by inconsistent rulings—including the Surabaya case above—and aligns judicial practice with the substantive prohibition found in the Compilation of Islamic Law (KHI) and the MUI Fatwa.

Despite this regulatory consolidation, a significant academic gap remains: the philosophical foundation of the prohibition is still under-theorised. Existing legal instruments primarily articulate *what* is prohibited rather than *why* the prohibition is necessary, leaving the deeper axiological question unanswered. Several prior studies have addressed this issue, including Lukman Hakim's work on Ḥifẓ al-Dīn as a Legal Consideration for Interfaith Marriage in the Perspective of Fiqh al-Maqāṣid,¹¹ and Sawaluddin Siregar's research on the Prohibition of Interfaith Marriage in the Compilation of Islamic Law and Human Rights.¹² However, these works remain limited: Hakim et al. confine themselves to Ḥifẓ al-Dīn as a single legal consideration without articulating its interaction with Ḥifẓ al-Nasl and Ḥifẓ al-Nafs; Siregar et al. employ a predominantly normative-comparative analysis that does not penetrate the philosophical foundations of the prohibition. Studies by Saini and Khairina & Hidayati similarly focus on consequential or regulatory dimensions without offering an integrated philosophical framework linking the legal-normative basis to the psychological and sociological impacts on the family. This is the academic gap that the present study seeks to address.

Building upon this gap, the present study advances the working hypothesis that the prohibition of interfaith marriage cannot be adequately justified through positivistic legal reasoning alone; rather, its rationale resides in the integrated triad of Ḥifẓ al-Dīn, Ḥifẓ al-Nasl, and Ḥifẓ al-Nafs, which together protect three fundamental dimensions of human life: faith, lineage, and psychological well-being.¹³ First, Ḥifẓ al-Dīn safeguards individual faith and identity from apostasy. Second, Ḥifẓ al-Nasl protects the legitimacy and clarity of a child's lineage. Third, Ḥifẓ al-Nafs preserves the psychological stability of both spouses and their offspring, who are otherwise vulnerable to disorders arising from interfaith tensions.¹⁴ The novelty of this study therefore lies in three interrelated contributions: (1) it reconstructs the prohibition as a philosophical-axiological issue read through the integrated triad of the three maqāṣid rather than treating each in isolation; (2) it situates the discussion within the most recent regulatory framework, particularly SEMA No. 2 of 2023, which has not yet been comprehensively addressed in prior literature; and (3) it brings al-Syatibi's philosophical apparatus into dialogue with concrete cases and contemporary social realities.¹⁵

Methodologically, this study employs a qualitative approach with library research as its main strategy, examining primary sources such as al-Syatibi's al-Muwāfaqāt, the Qur'an, and Indonesian legal instruments, alongside secondary scholarly literature. Building on this methodological foundation, the study is guided by three research questions: (1) How is the prohibition of interfaith marriage regulated within Indonesian positive law and Islamic legal thought, particularly in light of the 1974 Marriage Law,

¹¹ Lukman Hakim, "Ḥifẓ Al-Din as a Legal Consideration for Interfaith Marriage in the Perspective of Fiqh Al-Maqashid," *AL-ASHLAH: Journal of Family Law and Islamic Law* 2, no. 1 (2023): 048, <https://doi.org/10.69552/alashlah.v2i1.1846>.

¹² Sawaluddin Siregar, Indra Sakti, and Uswatun Hasanah, "Prohibition of Interfaith Marriage in the Compilation of Islamic Law and Human Rights," 2025, 127-39, <https://doi.org/10.62383/presidensial.v2i2.728>.

¹³ Abu Ishaq Al-Syathibi, *Al-Muwafaqat Fi Usul Al-Syariah* (Beirut: Darul Kutub al-'Ilmiyyah, 2004), 17–20.

¹⁴ S. Saini, "Nikah Beda Agama dan Dampaknya Terhadap Psikologi Anak Perspective Maqashid Al-Shari'ah," *ASASI: Journal of Islamic Family Law*, 2024, 2775-2887, <https://doi.org/10.36420/Asasi>.

¹⁵ Uswatun Hasanah Sampuju, Suraya Attamimi, and Muhammad Syarief Hidayatullah, "The Impact of Interfaith Marriage from the Maqashid Sharia Perspective," in *Proceeding of International Conference on Islamic and Interdisciplinary Studies (ICIIS)*, 2023, <https://jurnal.uindatokarama.ac.id/index.php/iciis/issue/archive>.

the Compilation of Islamic Law, the MUI Fatwa, and SEMA No. 2 of 2023?¹⁶ (2) How does al-Syāṭibī's Maqāṣid al-Sharī'ah—particularly Ḥifẓ al-Dīn, Ḥifẓ al-Nasl, and Ḥifẓ al-Nafs—provide philosophical justification for that prohibition? (3) What are the philosophical implications of these maqāṣid for family integrity, the legal status of children, and the psychosocial well-being of couples and their offspring?¹⁷

Based on the questions above, this study aims to produce a comprehensive philosophical analysis of the prohibition of interfaith marriage through al-Syāṭibī's Maqāṣid al-Sharī'ah. The expected results are threefold: first, the formulation of a philosophical argument that integrates Ḥifẓ al-Dīn, Ḥifẓ al-Nasl, and Ḥifẓ al-Nafs as the substantive foundation of the prohibition; second, the construction of a conceptual framework that bridges positive regulations—namely the Marriage Law, KHI, MUI Fatwa, and SEMA No. 2 of 2023—with philosophical-axiological justification; and third, the opening of new academic space for the development of Islamic family law studies that are more contextual and responsive to contemporary socio-religious dynamics in Indonesia. The study thereby contributes both theoretically to the advancement of fiqh al-maqāṣid and practically to the strengthening of marriage law policy in Indonesia.

RESEARCH METHOD

This research employs a qualitative method with a library research (*studi kepustakaan*) approach. This method aligns with the research objective, which focuses on the analysis of thought, namely examining the concept of Maqāṣid al-Sharī'ah according to al-Syāṭibī in the context of the prohibition of interfaith marriage. Library research is used to comprehensively explore primary and secondary literature sources relevant to the topic, including al-Syāṭibī's works, classical Islamic books, scientific journals, articles, and other documents that support the conceptual analysis.

The main data sources of this research are derived from literature discussing Maqāṣid al-Sharī'ah theory, the thought of leading scholars, and studies on the prohibition of interfaith marriage in Islam. In addition, the researcher examines references on Islamic legal norms in Indonesia, including the Marriage Law, the Compilation of Islamic Law (KHI), the Supreme Court Circular Letter (SEMA), and the views of contemporary scholars regarding the prohibition of interfaith marriages. The Qur'an and Hadith also serve as primary references to deepen the analysis.

The collected data are subsequently classified and analysed using a descriptive-analytical approach, which describes the content of thought before analysing it systematically.¹⁸ Through this approach, the study seeks to uncover how the concept and foundation of the prohibition of interfaith marriage operate to protect one's religious belief ('aqidah), as well as to answer the three research questions previously formulated.

DISCUSSION AND RESULTS

1. Interfaith Marriage in Indonesian Law and Islamic Law

Marriage according to scholars is a sacred bond that legalises physical and mental relationships between two individuals, namely husband and wife.¹⁹ The purpose of marriage is to form a Sakinah

¹⁶ Safira Nafa Khairina and Tri Wahyu Hidayati, "Interfaith Marriage After the Issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 Viewed from the Perspective of Maqashid Syariah," *Istidial: Journal of Islamic Legal Studies*, vol. 10, n.d.

¹⁷ Sofian Syaiful Rizal et al., "The Analysis on the Interfaith Marriage Problems Based on the Perspectives of Islamic Law and Human Rights in Indonesia," in *The 6th International Conference on Law, Technology, Spirituality and Society (ICOLESS)*, September 6–7, 2023.

¹⁸ Sugiyono, *Quantitative, Qualitative, and R&D Research Methods* (Bandung: Alfabeta, 2024), 275.

¹⁹ Abu Zahroh, *Kitabu Al-Ahwal Al-Syakhsyyah* (Egypt: Darul Fikri al-'Arabi, 1950).p 18

family and increase the quality of obedience and devotion to Allah SWT.²⁰ In the Qur'an, Surah Ar-Rum verse 21 Allah SWT says:

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

“And among the signs of His power is that He created for you mates of your own kind, that you may be at ease with them, and He made between you love and affection. Indeed, in such there are signs (of Allah's greatness) for those who think²¹”

The above verse explains that the creation of men and women in pairs to foster a sense of togetherness and tranquillity. Therefore, in order to create a sense of peace and security in the household, the two of them must support each other, complement each other, and create an attitude of ta'awun (working together) in achieving the ideal harmonious family degree.

Marriage in a legal formal manner has been regulated in the Marriage Law of 1974 article 1 states that "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy family (household)".

and eternal based on the Almighty God." And article 2 paragraph 1, namely "Marriage is valid if it is carried out according to the laws of each religion and belief."²² Thus, interfaith marriage is still a polemic and multi-interpretation among the community.

Confirming the prohibition of interfaith marriage, the Supreme Court issued the Supreme Court Circular Letter 2023. The SEMA reads: (1) A valid marriage is one that is performed according to each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of Law Number 1 Year 1974 concerning marriage: UU

(2) The court shall not grant the application for registration of marriage between people of different religions and beliefs.²³ Thus, the prohibition of interfaith marriage has no legal place and position in Indonesia.

Similar to the Supreme Court's SEMA on the prohibition of interfaith marriages, the Compilation of Islamic Law (KHI) also made a rejection stance. This is stated in KHI Article 40 which states that Muslim men are prohibited from marrying non-Muslim women. Article 44 of KHI states that Muslim women are prohibited from marrying men of different religions.²⁴ In addition, MUI issued a fatwa related to the prohibition of marrying non-Muslims regardless of gender and registered as citizens.²⁵ Thus, the prohibition of interfaith marriage reaps many contradictions and rejections in Indonesia.

²⁰ Isnain La Harisi, Abd. Muthalib, and Kurniadi, "The Role of 'Urf in Determining the Rights and Obligations of Husband and Wife to Achieve a Sakinah Family," *Al-Usariyah: Journal of Islamic Family Law* 2, 2024.

²¹ The Qur'an, Surah Ar-Rum verse 21, explains the purpose of marriage to create a *Sakinah, Mawaddah, warohmah* family

²² Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Article 1 and article 2

²³ SEMA (Supreme Court Edict Letter) Number 2 of 2023. The existence of the SEMA is to provide certainty and unity in the application of the law in adjudicating applications for marriage registration between people of different religions and beliefs.

²⁴ Presidential Instruction of the Republic of Indonesia, "Compilation of Islamic Law in Indonesia, Nomor 1 1991 " Pub. L. No. 40 and 44 (n.d.).

²⁵ The 1980 MUI Fatwa on the Prohibition of Interfaith Marriage reads: (1) Marriage between a Muslim woman and a non-Muslim man is forbidden, (2) Muslim men are forbidden to marry non-Muslim women.

In Islam, scholars have different views regarding interfaith marriage. The difference lies in the terms of polytheists and people of the book (*Abhu Kitab*).²⁶ The majority of the Jumbuh Ulama are of the opinion that it is permissible to marry people of the book and prohibit marriage and marrying someone with a polytheist man or woman.²⁷ The scholars rely on the argument of the Qur'an, Surah al-Maidah, verse 5 which reads:

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ ۖ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ ۖ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ وَلَا مَتَّحِدِينَ أَحْدَانٍ ۖ وَمَن يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ ۖ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ.

"All that is good is lawful for you this day. The food of those who have been given the Book is lawful for you, and your food is lawful for them. And (it is lawful for you to marry) chaste women among the believing women and chaste women among those who were given the Book before you, if you pay them their dowry in marriage, not with intent to commit adultery, nor to keep them as mistresses. Whoever disbelieves after believing, then indeed, his deeds have been in vain, and he will be among the losers in the Hereafter."²⁸

Regarding the prohibition of marriage with polytheist men and women, it has been explained in the Qur'an, Surah Al Mumtahanah verse 10 and Al-Baqarah verse 221. Allah SWT says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّهُنَّ بِإِيمَانِهِنَّ ۚ فَإِن عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۖ

"O you who believe! When believing women come migrating to you, then test them. Allah knows better their faith. When you have found out that they truly believe, then do not return them to the disbelievers (their husbands)."²⁹

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَا مَرْءٌ مُّؤْمِنٌ حَتَّىٰ يُؤْمِنَ ۚ وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَالْعَبْدُ مُؤْمِنٌ خَيْرٌ مِّن مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۗ

"And do not marry polytheist women until they believe. Indeed, a believing slave girl is better than a polytheist woman even if she appeals to you. And do not marry (polytheist men) to (believing women) before they believe. Indeed, a believing male slave is better than a polytheist male even if he attracts you."³⁰

With regard to the above verse, Wahbah Zuhaili also asserts that the scholars agree on the prohibition of marrying polytheist men and women, men of the Book with Muslim women, and the

²⁶ Abdurrahman Al-Jaziri, *Kitabu Al-Fiqh 'Ala Madzahib Al-Arba 'ah* (Beirut: Darul Kutub al-'Ilmiyah, 2003), hal 173-183

²⁷ Wahbah Zuhaili, *Al-Fiqhu Al-Islami Wa Adillatuhu* (Damaskus: Darul Fikri, 1984), hal. 153.

²⁸ The Qur'an, Surah al-Maidah verse 5. Explains the permissibility of marrying People of the Book.

²⁹ The Qur'an, Surah Al Mumtahanah verse 10. Explaining the prohibition of Muslim women (new converts to Islam) to return to their disbelieving husbands.

³⁰ The Qur'an, Surah al-Baqarah verse 221 explains that the prohibition of marrying Mushrikah women (worshippers of idols, space objects (al-Kawakib), fire, and animals).

prohibition of marrying apostate women (al-Murtaddah).³¹ Thus, the prohibition of different religions in Islam has its own categories according to the opinions of the scholars.

In the view of Maqashid Sharia, interfaith marriage causes more mafsadah (damage) than the maslahat (good) that exists in it.³² Thus, interfaith marriage can lead to damage and rift in the household, even having an influence on the validity of marriage, offspring (mental condition of children), and children's inheritance in the future.

A more critical reading, however, shows that the regulation of interfaith marriage in Indonesia cannot be reduced to a single normative position. The issue actually inhabits a zone of conflict of norms, where religious law, the constitutional guarantee of religious freedom and the right to form a family (Article 28B and Article 29 of the 1945 Constitution), and state-based marriage law operate simultaneously and at times in tension. Prior to the issuance of SEMA No. 2 of 2023, this tension manifested in a recurring pattern of judicial activism at the district court level, where several courts — including the Surabaya District Court in the RA-EDS case — granted applications for the registration of interfaith marriage by reading Article 35 of Law No. 23 of 2006 on Population Administration as a permissive opening for marriages determined by court order. This judicial practice reflected a posture of legal pluralism that recognised the simultaneous force of state law, religious law, and the constitutional rights framework, in contrast to the legal formalism later consolidated by SEMA No. 2 of 2023. The conclusion that interfaith marriage simply “has no place” in Indonesian law therefore needs to be qualified: it has no place in the present positive-law configuration after SEMA 2023, but the underlying constitutional debate concerning the relationship between freedom of religion and the right to marry remains philosophically open and requires substantive justification rather than mere formal closure.

The classical Islamic discourse likewise demands a more methodologically explicit reading. The *jumhūr* position permitting Muslim men to marry women of the People of the Book, as well as the prohibitive position embraced by Caliph ‘Umar and adopted by contemporary Indonesian institutions, are not arbitrary preferences but rest on a chain of reasoning grounded in the methodology of *ta’lil al-ahkām* — the identification of the operative legal cause (‘illah) behind a textual ruling. The ‘illah of the classical permission was the assumed scriptural and monotheistic continuity between the People of the Book and Muslims, while the ‘illah of ‘Umar’s restriction was the social risk of weakening Muslim identity in a politically vulnerable community. Modern Indonesian society does not fit either configuration cleanly: it is neither the religiously homogenous community of classical *fiqh* nor the politically vulnerable Muslim minority of ‘Umar’s era; it is a religiously plural society in which faith identity is reproduced primarily through the family unit. The contemporary transformation of the ‘illah — from doctrinal proximity to social-psychological fragility of the family — is precisely what justifies the move from a legal-comparative analysis to a *maqāṣid*-based philosophical analysis in the next section.

2. Contribution of al-Syathibi's Thought and Philosophical Aspects of the Prohibition of Interfaith Marriage

The philosophical aspect of the prohibition of interfaith marriage from the perspective of *maqashid Shari'ah al-Syatibi* has three main elements: *Hifzu al-Din* (Protecting Religion), *Hifzu al-Nasl* (Protecting Progeny), and *Hifzu al-Nafsu* (Protecting the Soul/Psychological).³³

Before applying the three *maqāṣid* as analytical instruments, it is necessary to reconstruct briefly al-Syāṭibī’s framework as it is articulated in *Al-Muwāfaqāt*. Al-Syāṭibī classifies human interests (*maṣlaḥah*) into three hierarchical levels: *ḍarūriyyāt* (essentials whose absence destroys life), *ḥājīyyāt*

³¹ Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu.*, hal. 151-152

³² Muhammad Tahir Ibn Ashur, *Maqashid Al-Syari'ah Al-Islamiyyah* (Beirut: Darul Kutub al-Lubnani, 2011), hal. 109-110

³³ Abu Ishaq Al-Syathibi, *Al-Muwafaqat Fi Usul Al-Syariah* (Beirut: Darul Kutub al-'Ilmiyyah, 2004), hal. 221

(complementary needs whose absence causes hardship), and taḥsīniyyāt (refinements that perfect human conduct). Within this hierarchy, the prohibition of interfaith marriage is best understood as operating at the ḍarūriyyāt level with respect to ḥifẓ al-dīn — insofar as the inter-generational transmission of religious identity is a primary, non-substitutable interest — while at the same time functioning methodologically as an instance of sadd al-dharā'ī' (closing the means to corruption): the prohibition is not directed at the bare act of interfaith union as such, but at the foreseeable train of consequences — loss of faith, contested guardianship, conflict over inheritance, and psychosocial fragmentation — that empirically threaten ḥifẓ al-nasl and ḥifẓ al-nafs. Read this way, the claim that interfaith marriage produces “more mafsadah than maṣlahah” ceases to be a rhetorical generalisation and becomes an evaluable proposition: it is assessed against the indicators of religious continuity, child status, and family stability that the three maqāṣid below explicate.

First, Hifzu al-Din (Guarding Religion). This element explains that the prohibition of interfaith marriages results in mafsadah (damage) in building a household, such as causing divorce due to the inequality of beliefs (faith) between husband and wife.³⁴ The ideal partner described by the Qur'an is that a slave who shares the same faith is better.

than a beautiful woman who is alluring but she is from the polytheists. This is stated in Surah al-Baqarah verse 221 which reads:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ ۚ وَلَا مَآءَةً مُّؤْمِنَةً حَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا أَعْجَبَتْكُمْ

"And do not marry polytheist women until they believe. Indeed, a believing slave girl is better than a polytheist woman even if she appeals to you."³⁵

With regard to marrying a woman of the Book, the opinions of Abu Haneefah and Shafi' put it in the makrooh category. This can be proven in Atsaru al-Shahabah that Caliph Umar avoided marrying a woman of the Book for fear of causing fitnah for the Muslims.

وقد قال عمر بن الخطاب رضي الله عنه للذين تزوجوا من نساء أهل الكتاب: طلقوهن

Atsar Shahabah from Caliph Umar above explains that he did not approve of interfaith marriages. In Tafsir al-Misbah, Quraysh Shibah has a tendency not to affirm interfaith marriage. He states that "the marriage of a Muslim man with Ahl Kitab has consequences and mudharat in achieving the goal of a Sakinah family in marriage. Let alone those with different religions, even those with different cultures are prone to marital breakdown."³⁶

Interfaith marriages are prone to conflicts between couples in the form of disputes or disagreements³⁷ both physical and non-physical that take place during interaction and communication with spouses of different religions. In addition, maintaining different theological values will threaten the

³⁴ Ahmad Fauzi, Kemas Muhammad Gemilang, and Darmawan Tia Indrajaya "Analysis of Nikah Beda Agama in the Perspective of Maqashid Shari'ah," *Madania: Journal of Islamic Sciences*, 2023, <https://ejournal.uin-suska.ac.id/index.php/madania/article/view/21663>

³⁵ The Qur'an, Surah al-Baqarah verse 221 explains that it is forbidden to marry Mushrikah women (worshippers of idols, space objects (al-Kawakib), fire, and animals).

³⁶ M. Quraisy Shihab, *Al-Misbah*, : Message, Impression, and Concordance of the Qur'an Vol. 15, 209M., hal. 31

³⁷ St. Aisyah Bm, "Social Conflict in Interfaith Relations," *Journal of Dakwah Tabligh*, 2014., hal. 189-208

integrity of families in society. Thus, interfaith marriage has a significant impact on individual religious identity and household integrity.³⁸

In addition to the theological impact, interfaith marriages will create sociological problems, namely differences in religious identity will harm the harmony between each family in communication.³⁹ In addition, differences in culture, religious understanding, and lifestyle will affect the interaction between them. Thus, interfaith marriages also have a sociological impact, threatening harmony and breaking up silaturahmi.

Second, Hifzu al-Nasl (Keeping Descendants). Interfaith marriages are prone to causing problems in the family, especially in giving birth to offspring. The non-recognition of interfaith marriages has an impact on the status of children resulting from these marriages, including problems with civil registration (family status) and inheritance rights from non-Muslim fathers.⁴⁰ In fact, in Islamic inheritance law, one of the barriers to inheritance is the difference in religion.

In a Hadith narrated by al-Imam Bukhari, it is explained that a Muslim cannot inherit a disbeliever, and a disbeliever cannot inherit a Muslim.

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَاسْحَاقُ بْنُ إِبْرَاهِيمَ، وَاللَّفْظُ لِيَحْيَى، قَالَ يَحْيَى: أَخْبَرَنَا، وَقَالَ الْأَخْرَانِ: حَدَّثَنَا ابْنُ عُيَيْنَةَ، عَنِ الرَّهْرِيِّ، عَنْ عَلِيِّ بْنِ حُسَيْنٍ، عَنْ عَمْرِو بْنِ عَثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ.

In the Hadith above, it can be concluded that there is a significant impact of interfaith marriages, namely the threat to the status of children in the future in government institutions in charge of recording important population events, such as: birth, marriage (including interfaith marriages), divorce, death, recognition/validation.

In addition, the problem of distribution of inheritance rights will be faced by families who have different religious partners.⁴¹

In Islam, nasab or descent refers to a man or husband. If the religious identity of a non-Muslim husband or father will cause sociological problems when having a daughter. Because a non-Muslim father does not have the legality to be a guardian for his daughter.⁴² So that in the dynamics of Muslim families, interfaith marriages will face serious and ongoing problems.

Third, Hifzu Nafs (Protecting the soul / Psychological). Interfaith marriage will create deep trauma for children, both mentally (personal) and socially, such as associations with peers, neighbours,

³⁸ Nisful Laili and Rina Sari Kusuma, "Conflict Management Strategies for Children of Interfaith Marriages in Religious Decision Making," in *Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)*, vol. 661, 2022, <https://www.atlantispress.com/article/125974100>

³⁹ Khainuddin Khainuddin and M Thoriquul Huda, "Interfaith Religious Harmony in Besowo Kediri Landscape," *Tribakti: Journal of Islamic Thought*, no. 326-44 (2022), <https://ejournal.uit-lirboyo.ac.id/index.php/tribakti/article/view/2328>

⁴⁰ Insarullah Insarullah, Rahmia Rachman, and Erlan Ardiansyah "International Civil Law Perspective on Interfaith Marriage for Indonesian Citizens," *Wajah Hukum*, 2022, <https://wajahhukum.unbari.ac.id/index.php/wjhkm/article/view/932>

⁴¹ Galluh Laraszaty, Syaiful Asmi Hasibuan, and J.E. Melky Purba, "Analysed of Legal Siri Marriage Registration in a Population Administration (Family Card) a Study on Legal Protection for Children," *Polit Journal: Scientific Journal of Politics* 2 2022 (n.d.): 86-94., <https://biarjournal.com/index.php/polit/article/view/688>

⁴² Ahmad Zahro, *Contemporary Jurisprudence: Answering 111 Problems Plus 23 Islamic Solutions* (Jombang: Unipdu Press, 2014), hal. 143.

and social communities in society.⁴³ Interfaith marriage will indirectly give birth to a generation that is mentally weak, lost of character, and identity. In the Qur'an, Surah An Nisa verse 9 Allah SWT says:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

"And let those fear (Allah) who should leave behind them weak offspring, of whom they fear for their welfare. Therefore, let them fear Allah and speak the truth."⁴⁴

The above verse provides a view that giving birth to offspring or weak generations is part of a form of behaviour that is despicable before Allah SWT. So that interfaith marriages that will have an impact on the psychology of children in living a lifestyle and interacting with the social environment.⁴⁵

It must be acknowledged at this point that, in the original idiom of al-Syāṭibī, *ḥifẓ al-nafs* primarily denotes the protection of bodily life from death or serious harm, rather than mental health or psychosocial trauma. The reading deployed here therefore relies upon a deliberate contemporary reformulation of maqāṣid. Jasser Auda has argued that *ḥifẓ al-nafs* in a systems-based reading must be expanded from the protection of mere biological life to the protection of human dignity, mental health, and psychosocial well-being — values that are themselves constitutive of a meaningful human existence. Ibn 'Āshūr similarly reframes maqāṣid as universal social purposes (fiṭrah) that include the integrity of the family as a primary good, thereby providing a doctrinal bridge between al-Syāṭibī's classical formulation and a psychosocial reading of *ḥifẓ al-nafs*. The empirical claim that children of interfaith couples face elevated risks of religious-identity confusion and conflict-management stress is not, on this view, a free-floating sociological generalisation but is supported by recent psychological research, including the comparative study by Chebotareva and Volk on inter-faith and inter-ethnic couples and the Indonesian-context findings of Khairina and of Laili and Kusuma. The *ḥifẓ al-nafs* argument deployed in this article is therefore best characterised as a contemporary maqāṣid development that builds on al-Syāṭibī's foundational principle while drawing on Auda and Ibn 'Āshūr for its expanded conceptual scope.

CONCLUSION

Returning to the three research questions that guide this study, the philosophical analysis offered above yields three corresponding conclusions. In response to the first question, the prohibition of interfaith marriage in Indonesia is governed by a layered configuration of positive law and Islamic legal thought: the 1974 Marriage Law (especially Article 2 paragraph 1), the Compilation of Islamic Law (Articles 40 and 44), the MUI Fatwa, and most decisively the Supreme Court Circular Letter No. 2 of 2023, which has consolidated a position of legal formalism after a prior period of judicial pluralism mediated through Article 35 of Law No. 23 of 2006 on Population Administration. The current configuration thus closes the formal-legal question, but as the discussion has shown, it does not in itself supply the substantive justification that an issue of this constitutional and existential weight requires.

In response to the second question, al-Syāṭibī's Maqāṣid al-Sharī'ah supplies precisely that justification. Read through the tripartite hierarchy of *ḍarūriyyāt*, *ḥājjiyyāt*, *taḥsīniyyāt*, the prohibition operates at the *ḍarūriyyāt* level in respect of *ḥifẓ al-dīn*, while methodologically functioning as an instance

⁴³ Elena Y. Chebotareva and Marina I. Volk, "Life and Family Values Similarity in Inter-Ethnic and Inter-Faith Couples," *Behavioural Sciences*, 2020, <https://www.mdpi.com/2076-328X/10/1/38>

⁴⁴ The Qur'an, Surah An-Nisa verse 9 explains the prohibition of leaving and inheriting a weak generation.

⁴⁵ Tri Wahyu and Safira Nafa Khairina Hidayati, "Interfaith Marriage After the Issuance of Supreme Court Circular Letter (SEMA) Number 2 of 2023 Viewed from the Perspective of Maqashid Syariah," *Istiidal: Journal of Islamic Legal Studies* 10 (n.d.).

of *sadd al-dbarā'ī*: the prohibition closes the means to a foreseeable chain of harms touching *ḥifẓ al-dīn* (the integrity of religious belief and its inter-generational transmission), *ḥifẓ al-nasl* (the legal status, guardianship, and inheritance rights of children), and — in its contemporary reformulation through Auda and Ibn 'Āshūr — *ḥifẓ al-nafs* (the psychosocial dignity of couples and offspring). Together, the three maqāṣid furnish a coherent philosophical justification for the prohibition that does not depend on bare legal formalism.

In response to the third question, the philosophical implications of these maqāṣid for family integrity, the legal status of children, and the psychosocial well-being of couples and their offspring are mutually reinforcing rather than separable. The prohibition is properly read not as a mere doctrinal restriction but as the protection of an integrated human good in which faith identity, lineage rights, and psychological well-being are jointly secured. This study's contribution, accordingly, lies in showing that what positive law in Indonesia has settled as a formal rule rests on a substantive maqāṣid-based justification. Future research is invited to test this framework empirically against Indonesian case data on child welfare in mixed-faith households and to extend the analysis comparatively to other Muslim-majority jurisdictions in Southeast Asia.

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