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Interfaith Marriage from the Perspective of Rationality: Theocentrism in Islamic Law and Anthropocentrism in Human Rights Law

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Abstract:

This article stems from a theoretical debate concerning interfaith marriage as formulated within Islamic and human rights laws. While Islamic law tends to prohibit interfaith marriage, human rights instruments view it as an individual's right and freedom. Therefore, this research aims to scrutinise the argumentative basis of Islamic law and human rights law regarding interfaith marriage. To address this focal issue, this study employed a literature research model reliant on content analysis, bearing the result concluding that the disparity in formulations between Islamic law and human rights law regarding the legality of interfaith marriage is due to their differing argumentative bases: Islamic law is rooted in theocentrism, whereas human rights law is rooted in anthropocentrism. However, by examining the opinions of contemporary thinkers regarding *maqashid sharia*, there appears to be a paradigm shift in theocentrism of Islamic law so that in the context of interfaith marriage, both Islamic law and human rights can justify it as part of a person's human rights.

Keywords: interfaith marriage; Islamic law; human rights.

Introduction

Interfaith marriage remains an intriguing subject for scholarly inquiry, not merely due to the normative legality debate articulated in the Quran and hadith but also within the context of Indonesian regulations. Normatively, interfaith marriage

is mentioned in several Quranic verses, such as al-Baqarah: 221, al-Mumtahanah: 10, and al-Maidah: 5, with various interpretations proposed by scholars¹. The debate within Indonesia's legal framework is also intriguing. In Article 2, Paragraph 1 of Law Number 1 of 1974 concerning Marriage (Marriage Law 1974), there is no explicit permission or prohibition for interfaith marriage.² Meanwhile, other regulations, including Article 35 of Law Number 23 of 2006 concerning Population Administration (Population Administration Law 2006), open possibilities for allowing interfaith marriage.³ The article states that marriages between people of different religions can be registered in the same way that marriages are usually registered.⁴

In Human Rights Instruments (HRI), provisions concerning freedom in marriage are found in Article 16 (1) of the Universal Declaration of Human Rights, stating that adults, irrespective of nationality, citizenship, or religion, have the right to seek partners and establish families.⁵ They possess equal rights in marriage, during marriage, and in divorce. The doctrinal differences between Islamic Law and human rights law serve as evidence of fundamental disparities between Islamic law principles and HRI that cannot be reconciled. This contrast becomes an argument for apologists, asserting a fundamental divergence between Islamic law (*fiqh*) and the fundamental principles upheld in HRI. In this context, according to these apologetic groups, if differences exist between the two, then HRI must be rejected because Islam represents a comprehensive doctrine.⁶

Contrary to the aforementioned apologetic stance, the liberal faction suggests a need for reinterpretation of controversial verses in alignment with the fundamental

¹ Suhadi, *Kawin Lintas Agama : Perspektif Kritik Nalar Islam* (Yogyakarta: LKiS, 2006), 20.

² Rosdiana Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, 'Legitimacy on Inter-Faith Marriages: An Analysis of the Role of Religious Councils on the Legal Policy in Indonesia', *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (9 July 2019), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/11710>.

³ Ayub Mursalin, 'Legalitas Perkawinan Beda Agama: Mengungkap Disparitas Putusan Pengadilan Di Indonesia', *Undang: Jurnal Hukum* 6, no. 1 (12 May 2023): 117, <https://doi.org/10.22437/ujh.6.1.113-150>; Anthin Lathifah, 'State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (27 June 2020): 1–30, <https://doi.org/10.19105/al-ihkam.v15i1.2689>.

⁴ Ahmad Rajafi, Arif Sugitanata, and Vinna Lusiana, 'The "Double-Faced" Legal Expression: Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia', *Journal of Islamic Law* 5, no. 1 (29 February 2024): 19–43, <https://doi.org/10.24260/jil.v5i1.2153>; Diana Farid et al., 'Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court', *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (1 December 2022): 355, <https://doi.org/10.29240/jhi.v7i2.4574>; Muhammad Nurohim, Yusuf Hanafi Pasaribu, and Asmaiyani Asmaiyani, 'The Relationship between a Wife's Satisfaction in the Iddah Period with Marriage and Divorce', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 (29 December 2021): 208–18, <https://doi.org/10.30631/alrisalah.v21i2.778.dukan>, *Media Syariah*, Vol. 20, No. 2, 2018, 144.

⁵ M. Thahir Maloko et al., 'Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives', *Cogent Social Sciences* 10, no. 1 (31 December 2024): 2308174, <https://doi.org/10.1080/23311886.2024.2308174>; Fahad Al Aghbari et al., 'Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective', *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (3 February 2024): 33–50, <https://doi.org/10.22219/ljih.v32i1.31493>.

⁶ Masykuri Abdullah, 'Islam Dan Hak Asasi Manusia: Penegakan Dan Problem HAM Di Indonesia', *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 38, no. 2 (9 December 2014), <https://doi.org/10.30821/miqot.v38i2.68>.



principles of HRI based on classical Islamic law doctrine. Simultaneously, another group critically examines Islamic law and HRI concepts, offering solutions for a philosophical and sociological interpretation of provisions that, on the surface, exhibit conflict between Islamic law and HRI. Thus, at least in responding to the intersection between Islamic law and human rights, three groups—the apologetic group, the liberal group and the group that tries to mediate between the apologetic and liberal groups—are involved.⁷ The above discussion places interfaith marriage within the debate between Islamic law and HRI. Within Islamic law, there exists limited permissibility for men to marry women of the book, but not vice versa. This implies an absolute prohibition for a woman to marry a non-Muslim. Conversely, in HRI doctrine, individuals are granted the freedom to choose their life partners without being constrained by religious doctrine. In the context of HRI, the implementation of marriage can be entirely entrusted to each citizen intending to marry⁸.

As expounded above, the intersection of Islamic law and HRI issues has sparked various studies, such as the one conducted by Musdah Mulia, highlighting gender perspectives. Mulia contends that the allowance for a man to marry a woman of the book, while the reverse does not hold, is a gender discriminatory legal formulation, perceiving women as fickle beings unable to maintain consistency in their principles.⁹ Research explicitly capturing the divergent perspectives in judging interfaith marriages is presented in an article examining the views of the Liberal Islam Network (JIL) and the Indonesian Ulema Council (MUI) on religiously diverse unions. However, the article fails to elucidate the argumentative bases of the two compared factions, apart from the conclusion that the JIL prioritises reason over text (*nash*), while the MUI, as depicted in the article, assumes the role of a community guardian and a reference point.¹⁰

Similarly, research focusing on the legal prescription of interfaith marriages in the Quran and Sunnah can be presented to delineate differences from the author's study. One such article, titled "Interfaith Marriage in the Perspective of the Quran and Sunnah and Its Issues," categorises interfaith marriage into three types: first, the marriage of a Muslim man with a polytheist woman (*musyrikah*); second, the marriage of a Muslim man with a woman of the People of the Book (*kitabiyah*); third, the marriage of a Muslim woman with a non-Muslim man, whether polytheist or from the People of the Book (*kitabiyah*), which, according to scholarly consensus (*ijma'*), is deemed forbidden.¹¹ Another study by Muhammad Adil and Syahril Jamil

⁷ Ibid.

⁸ Faiq Tobroni, 'Kebebasan Hak Ijtihad Nikah Beda Agama Pasca Putusan Mahkamah Konstitusi', *Jurnal Konstitusi* 12, no. 3 (2015): 610, <https://doi.org/10.31078/jk1239>.

⁹ Musdah Mulia, *Ensiklopedia Muslimah Reformis: Pokok-Pokok Pemikiran Untuk Reinterpretasi Dan Aksi* (Tangerang Selatan: Baca, 2020), 708.

¹⁰ Mohammad Rizky Eka Aditya et al., 'The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach', *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (30 December 2023): 456–70, <https://doi.org/10.22373/ujhk.v6i2.20059>; Zaidah Nur Rosidah, 'Sinkronisasi Peraturan Perundang-Undangan Mengenai Perkawinan Beda Agama', *Al-Ahkam* 23, no. 1 (21 April 2013): 1–20, <https://doi.org/10.21580/ahkam.2013.23.1.70>.

¹¹ Zainul Mu'ien Husni, 'Pernikahan Beda Agama Dalam Perspektif Al-Qur'an Dan Sunnah Serta Problematikanya', *AT-TURAS: Jurnal Studi Keislaman* 2, no. 1 (2015): 91, <https://ejournal.unuja.ac.id/index.php/at-turas/article/view/169>.



focuses on the polemics between scholars and activists of interfaith marriages and the evidence employed by both groups¹². A comparative piece analysing the Constitutional Court Decision Number 24/PUU-XX/2022 regarding the judicial review of the Marriage Law could serve as additional comparative literature.¹³

However, these two aforementioned studies do not delve into the differences between the formulations of Islamic law and human rights law concerning interfaith marriages from an epistemological standpoint. They merely describe the legal discrepancies between Islamic law and human rights. In contrast, this article aims not to pass judgment on the doctrines of Islamic law or human rights related to interfaith marriages. The objective is to unveil the argumentative bases constructed in both Islamic Law and human rights. In different terms, this article scrutinises the epistemological basis underpinning the formulations of Islamic law and human rights concerning the prohibition of interfaith marriages. The aim is to objectively assess the argumentative bases of Islamic law and human rights in formulating laws regarding interfaith marriages. Another thing that will be shown in this study is related to the shift in the theocentric paradigm of Islamic law that allows the meeting point between Islamic law and human rights in relation to interfaith marriage

Method

Methodologically, this study falls under legal literature research examining assumed legal findings. Primary data relied upon encompasses Islamic law and human rights-related primary data, complemented by supplementary information pertinent to the article's theme. The approach employed is qualitative legal research¹⁴, aiming to depict the reality constructed within the legal object under scrutiny, specifically the legal prescriptions of interfaith marriages compared through the study of Islamic Law and human rights. All data related to the study of Islamic law and human rights on interfaith marriages were obtained through a literature review, which was then analysed using content analysis. Operationally, this study begins by analysing the legal formulation of interfaith marriage, as stated in the books of *fiqh* and *tafsir* (read: Islamic law), as well as those in human rights instruments. Then, the process continued with analysing the epistemological basis of Islamic law and human rights regarding interfaith marriage

Results and Discussion

Interfaith Marriages from the Perspectives of *Islamic Law* and Human Rights

Discussing the legal status of interfaith marriages in an Islamic law context involves at least three interrelated verses: al-Baqarah verse 221, al-Mumtahanah verse 10, and al-Maidah verse 5. The first explicitly prohibits marrying polytheistic women before they embrace faith. Even a believing slave is considered superior to a polytheistic woman, despite any attraction one may feel. Another prohibition within the same verse is marrying polytheists (to believing women) before they embrace

¹² Muhammad Adil and Syahril Jamil, 'Interfaith Marriage in Indonesia: Polemics and Perspectives of Religious Leaders and Community Organizations', *Religion & Human Rights* 18, no. 1 (27 March 2023): 31–53, <https://doi.org/10.1163/18710328-bja10031>.

¹³ Bani Syarif Maula and Ilyya Muhsin, 'Interfaith Marriage and the Religion–State Relationship: Debates between Human Rights Basis and Religious Precepts', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (11 May 2024): 791–820, <https://doi.org/10.22373/sjkh.v8i2.19479>.

¹⁴ P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford: Oxford University Press, 2019), 56.



faith, as in the Quranic perspective, a believing slave is deemed superior to a polytheist, despite any attraction one may feel.¹⁵

According to al-Sa'di's interpretation - a mufassir who followed the Hanbali school of thought (1889-1957 M)- these verses' prohibitions are general and cannot be exempted. He posits that the prohibitions mentioned align with the wisdom expressed in the same verses, indicating that polytheists might cast believers into a valley under Allah's threat of hellfire, both verbally and through actions.¹⁶ Then, in the second verse, Allah calls upon in His saying:

"O you who have believed, when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. But give the disbelievers what they have spent. And there is no blame upon you if you marry them when you have given them their due compensation. And hold not to marriage bonds with disbelieving women, but ask for what you have spent and let them ask for what they have spent. That is the judgement of Allah; He judges between you. And Allah is Knowing and Wise"¹⁷

This verse is elucidated through the actions of the Prophet's companions, particularly Umar ibn al-Khattab, as narrated by al-Zuhri. Umar subsequently divorced his two wives, who remained polytheists. These wives referred to are, firstly, Qaribah bint Abi Umayyah ibn al-Mughirah, married by Muawiyah ibn Abi Sufyan, and secondly, Ummu Kultsum bint Amr, later married by Abu Jahm¹⁸ Meanwhile, in the third verse, al-Maidah verse 5, Allah declares. in the Quran:

"This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking [secret] lovers. And whoever denies the faith - his work has become worthless, and he, in the Hereafter, will be among the losers."¹⁹

The aforementioned al-Maidah verse is also understood by some scholars as evidence prohibiting marriage between a Muslim man and the People of the Book. There are even narrations that Umar ibn Khattab intended to lash those who married from the People of the Book due to concerns that it might become a tradition followed

¹⁵ Y. Sonafist and Henny Yuningsih, 'Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia', *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (28 December 2023): 381–91, <https://doi.org/10.31958/juris.v22i2.10934>; Asy'ari Asy'ari and Triansyah Fisa, 'Interfaith Marriage in Perspectives of Classical and Modern Scholars', *Al-Manahij: Jurnal Kajian Hukum Islam*, 25 November 2022, 287–300, <https://doi.org/10.24090/mnh.v16i2.6772>.

¹⁶ Al-Sa'di, *Taysir Karim Al-Rahman Fi Tafsir Kalam al-Mannan*, vol. 2 (Makkah: Ihya' al-Turats, 1988), 35.

¹⁷ Kementerian Agama Republik Indonesia, 'Qs. al-Mumtahanah Ayat 10', in *Al-Quran*, Qur'an Kemenag (Jakarta: Kementerian Agama RI, 2022), <https://quran.kemenag.go.id/>.

¹⁸ Al-Baghawi, *Ma'alimal-Tanzil*, vol. 3 (Kairo: Dar al-Fath, 1991), 345.

¹⁹ Kementerian Agama Republik Indonesia, 'Qs. al-Maidah Ayat 5', in *Al-Quran*, Qur'an Kemenag (Jakarta: Kementerian Agama RI, 2022), <https://quran.kemenag.go.id/>.



by future Muslim generations.²⁰ Generally, the three aforementioned verses, as presented earlier, possess varying degrees of prohibition. The first mentioned verse explicitly prohibits followers of Prophet Muhammad from marrying polytheists, whether Muslim men marry polytheistic women or vice versa. Then, in the second verse, the prohibition revolves around the marriage of believing women to disbelieving men. Meanwhile, in the third verse, followers of Prophet Muhammad are allowed to marry women of the People of the Book.²¹ However, according to some scholars categorising the People of the Book as polytheists, verse 5 of al-Maidah is deemed abrogated by verse 221 of al-Baqarah. This perspective, according to prominent Indonesian Quranic exegete M. Quraish Shihab, is highly challenging to accept logically since al-Baqarah was revealed before al-Maidah. It is illogical for something that came earlier to nullify the law of something that had not come or came after it²².

For Quraish Shihab, quoting the viewpoints of companions that emphasised despite the differences in monotheistic beliefs between the People of the Book and the Islamic creed, the Quran does not equate them with polytheists but rather distinguishes and designates them as the People of the Book. Hence, verse 5 of al-Maidah should be seen as allowing marriage between a Muslim man and a woman of the People of the Book. However, this permission served as an immediate necessity during times when Muslims were frequently away for jihad without the ability to return to their families and also for propagation. Nonetheless, in the end, a marriage will be enduring and peaceful when there is alignment in life perspectives between spouses, as differences in religion, culture, and even educational levels often lead to misunderstandings and marriage failures²³.

Regarding the wisdom behind the allowance for Muslim men to marry women of the People of the Book, as articulated by Mahmud Syaltut, it is based on the normal Islamic rule that men hold responsibility for leadership over their wives, have authority over the family, and guide their spouses and children. Therefore, this allowance is intended to promote love and harmony, eroding discontentment towards Islam.²⁴ Referencing the three aforementioned verses, the term "interfaith marriage" is consistently perceived as a union between Islam and the People of the Book (Ahlul Kitab). This perception is reasonably justified since the label of "kafir" (unbeliever) and "musyrik" (polytheist) is explicitly attributed to the People of the Book in those verses. Regarding this, as mentioned by Muhammad Ghalib, the Quran explicitly designates the label of "kafir" to the People of the Book. However, there remains debate as to whether the People of the Book can be classified as polytheists or not²⁵.

In addition to debates regarding the labels attributed to the People of the Book, scholars also discuss the meaning of "Ahlul Kitab," debating whether it refers to a

²⁰ Al-Thabari, *Jami' al-Bayan fi Ta'wil al-Quran*, vol. 2 (Kairo: Dar al-Qalam, 1994), 390.

²¹ Suhadi, *Kawin Lintas Agama : Perspektif Kritik Nalar Islam*, 20.

²² M. Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan dan Keserasian al-Quran*, vol. 1 (Jakarta: Lentera Hati, 2000), 443.

²³ M. Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan dan Keserasian al-Quran*, vol. 3 (Jakarta: Lentera Hati, 2000), 29.

²⁴ Muhammad Ghalib M, *Ahl Al-Kitab : Makna Dan Cakupannya* (Jakarta: Paramadina, 1998), 73.

²⁵ *Ibid.*, 74.



religious community or specifically to the ethnic group of the Children of Israel. Those who understand Ahlul Kitab as referring to specific religious followers, such as Abu Hanifah and some scholars associated with the Hanafi school, as well as some scholars following the Hanbali school, categorise anyone who believes in a Prophet or a book revealed by Allah as part of Ahlul Kitab, without limiting it to the Jewish and Christian religious groups²⁶. This definition differs from Imam Shafi'i's view, which restricts the category of Ahlul Kitab specifically to the Jewish and Christian descendants of Israel, excluding other ethnicities who follow the Jewish and Christian faiths.²⁷

A discourse that should be acknowledged is the discussion on Ahlul Kitab developed by Ridha and Maulana Muhammad Ali, stating that Ahlul Kitab not only includes Jews and Christians but also encompasses Zoroastrians and Sabians. Moreover, they suggest that the category of Ahlul Kitab extends to Hindu, Buddhist, and Confucian adherents. Ali's perspective isn't solely motivated by a modern agenda but is also based on indications in the Quran, which express that Allah has sent His messengers to every community to proclaim promises and warnings, delivering sacred scriptures and teachings of justice.²⁸ Another debate arises concerning the legal status of marriage between Islam and the People of the Book. In response to this issue, three opinions have emerged among the jurists (*fuqaha*). The first opinion strictly prohibits such marriages, leaving no room or possibility for marriages between Muslim women and the People of the Book or vice versa. The second opinion unequivocally permits these marriages, allowing for the widest range of interfaith marriages. The third opinion, considered moderate, permits interfaith marriages but within extremely limited boundaries and subject to specific conditions.²⁹ Unlike the provisions in human rights instruments, as outlined in Article 16(1) of the Universal Declaration of Human Rights (UDHR), which states:

*"Adult men and women, without distinction to nationality, citizenship, or religion, have the right to seek their life partner and establish a family. They have equal rights in marriage, during marriage, and in case of re."*³⁰

This article can be approached from two perspectives. The first is the perspective of equality. From this viewpoint, the phrase "without distinction to nationality, citizenship, or religion" does not imply the legalisation of interfaith marriage. Instead, it emphasises the equality among all religious adherents in having life partners. The second perspective is that of liberty. This article becomes contentious from a liberty perspective because the freedom guaranteed by this article could extend to the freedom to enter into marriages between different religions. Furthermore, when connected with Article 16(2) of UDHR, which states that marriage should be based on the mutual consent of both parties, it strengthens the

²⁶ Ibid., 29.

²⁷ Ibid., 30.

²⁸ Umi Sumbulah, *Islam Dan Ahlul Kitab Perspektif Hadis*, 2nd ed. (Malang: UIN-Maliki Press, 2012), 36.

²⁹ Eka Cahyani Ikhwan, Abd Halim Talli, and Muh Jamal Jamil, 'Penundukan Hukum dalam Pernikahan Beda Agama Perspektif Hukum Islam (Studi Kasus di Tondon Mamullu Kecamatan Makale Kabupaten Tana Toraja)', *QadāuNā*, no. 3 (2023): 911–27.

³⁰ Komnas HAM, 'Deklarasi Universal Hak-Hak Asasi Manusia (DUHAM)' (Jakarta, 1948), [https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--\\$R48R63.pdf](https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--$R48R63.pdf).



notion that Article 16(1) in UDHR leans more towards legalising interfaith marriages.

In contrast to Hamka's viewpoint, when commenting on Article 16 (1) of UDHR, he stated that Islamic law indeed does not recognise tribal or national boundaries because, in Islamic law, anyone who shares the same belief (i.e., Islam) becomes part of the Muslim community as a unified community. Nevertheless, there are still recognised limitations concerning religious matters, according to Hamka.³¹ With regard to the issue of the status of interfaith marriages in the context of Article 16(1) of UDHR, referring to the theory of relative universality, regardless of whether the article is interpreted from an equality or liberty perspective, it can still be limited by the national legal principles applicable in Indonesia. A regulation must be formulated, taking into account the social and cultural profiles of a nation, which constitute its identity alongside the juridical aspects.

However, in the Indonesian context, there are no specific legal provisions that decisively prevent interfaith marriages, even though one clause of the Human Rights Law (HRL), namely Article 10 (1 and 2) mentions that every individual has the right to form a family and continue their lineage through a lawful marriage. Clause (2) states that a lawful marriage can only occur with the free will of the concerned prospective spouses according to the provisions of the laws and regulations. The issue then becomes complicated to interpret the phrase "according to the provisions of the laws and regulations." If "forced," this phrase could be restricted by the stipulations in Articles of Law 1/1974, wherein Asmin perceives several articles that "restrict" the occurrence of interfaith marriages among Indonesian citizens, namely Article 2 paragraph (1) and its explanation, Article 8 letter f, Article 16, 20, 22, and Chapter XII part three (mixed marriages) especially Article 57. Likewise, in the provisions of the Indonesian Compilation of Islamic Law (KHI), in Articles 40 and 44, explicitly mention the prohibition of marriages between a man and a woman under certain conditions: a woman who is still bound in a marriage with another man; a woman in her waiting period (*iddah*) with another man; a woman who is not of the Islamic faith. Furthermore, Article 44 stipulates that an Islamic woman is prohibited from marrying a non-Muslim man³².

Tracing the Basis of Islamic Jurisprudence and Human Rights Arguments

The impossibility of interfaith marriage within the Islamic jurisprudential framework is intricately linked to the theocentric argumentation underpinning Islamic jurisprudence. Conversely, the possibility of interfaith marriage, as reflected in the Universal Declaration of Human Rights (UDHR), is closely associated with the legal narrative's inclination towards protecting humans as the central axis (anthropocentrism).

Affirming the intertwining of jurisprudential law formulations with the theocentric aspect, especially concerning interfaith marriages, the primary focus of this study, is substantiated by uncovering the wisdom extolled by scholars. Among

³¹ Hamka, *Studi Islam* (Jakarta: Pustaka Panjimas, 1983), 232.

³² Kementerian Agama RI, 'Kompilasi Hukum Islam Di Indonesia' (Jakarta: Kementerian Agama RI, 2018), <https://simbi.kemenag.go.id/eliterasi/storage/perpustakaan/slims/repository/b5c07c0ce34195adb3cd15ad059b33f2.pdf>.



these, the purpose is to attain outward and inward tranquillity, referred to in the Quran as a strong covenant (*mitsaqghalidan*).³³ Consequently, as spouses, it is incumbent upon them to maintain the sanctity and honour of the family. Another consequence is that no one without religious and state-sanctioned justifications can dissolve the marriage bond.³⁴

The wisdom underlying is the succession of the divine mandate on Earth and as a means to continue the inheritance process. Furthermore, it serves as the axis around which various forms of happiness and well-being revolve. Even after the demise of one spouse, the fruits of the marriage persist through prayers. It is not overstating to quote the Prophet stating that marriage completes half of one's faith.³⁵ Moreover, the theocentric essence of marriage, implying the prohibition of interfaith marriages, can be traced within the Compilation of Islamic Law (KHI), projecting marriage as an enduring covenant (*mitsaqanghalidzan*), a means to obey and execute Allah's commands, regarded as an act of worship. Similarly, Article 1 of the 1974 Marriage Law reaffirms marriage as a spiritual and physical bond between a man and a woman as spouses, intending to form a happy and eternal family based on the belief in the One Almighty God³⁶.

Categorising marriage as a field of worship instils the understanding that all marriage-related aspects are considered acts of worship. From providing spiritual sustenance to the wife (sexual intercourse), material sustenance (financial support), nurturing and educating children to become knowledgeable and quality Islamic generations, and ensuring a suitable living environment, all these are aimed at becoming acts of worship to Allah. In short, marriages directed towards achieving a life of tranquillity, love, and compassion cannot be detached from the objectives of perpetuating the Islamic generation, fulfilling sexual desires, upholding honour, and worshipping Allah.³⁷ The profound theocentric influence outlined above leads to the closure of possibilities for interfaith marriages. This assertion finds merit by mentioning marriage as an exclusive act of worship and a means of drawing oneself closer to the Creator. Therefore, various arguments are presented to reinforce the intended prohibition, such as the concept of *hifdal-din*. In other words, the prohibition of interfaith marriages serves as concrete evidence of defending religion (*hifdal-din*)³⁸.

Several Quranic verses are invoked to reinforce the obligation of a Muslim to steadfastly adhere to their faith, one of which is Surah Al-Tahrim, verse 6, explicitly commanding believers to safeguard themselves and their families from the flames of Hell. The fuels, as per the continuation of the verse, encompass humans and stones, guarded by the vigilant Angels who never defy Allah's command. Another pertinent

³³ Aditya et al., 'The Problem of Interfaith Marriage in Indonesia'.

³⁴ A. Zamakhsyari Baharuddin and Rifqi Qowiyul Iman, 'At-Tafriq Al-Qadhâ'i And The Religious Courts' Authority In Deciding A Divorce', *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 1 (27 June 2020): 1–12, <https://doi.org/10.18592/sjhp.v20i1.3493>.

³⁵ Asmawi, *Filsafat Hukum Islam* (Yogyakarta: Teras, 2009), 94.

³⁶ Indonesia, Pemerintah Pusat, 'Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan', Undang-undang (UU) (Jakarta: Indonesia, Pemerintah Pusat, 1974), <https://peraturan.bpk.go.id/Download/36382/UU%20Nomor%201%20Tahun%201974.pdf>.

³⁷ Syamruddin Nasution, *Pernikahan Beda Dalam Al-Quran: Kajian Perbandingan Pro Dan Kontra* (Pekanbaru: Yayasan Pusaka, 2011), 265.

³⁸ Ahmad Rajafi, *Nalar Hukum Keluarga Islam Di Indonesia* (Yogyakarta: Istana Publishing, 2015), 192.



verse is Surah An-Nisa, verse 9, which records the divine decree prohibiting one from leaving a weak offspring.³⁹ These two verses justify the Muslim's obligation to preserve their faith. The first verse enjoins the protection of oneself and the family from the inferno's blaze, including the prohibition of marrying non-Muslims, construed as an injunction to marry someone of the same faith (i.e., Muslim). Meanwhile, the second verse refers to the weakness being iman or faith-related. Through this Quranic argumentation, it is posited that the prohibition of interfaith marriage is based on Quranic injunctions and the directives within the Prophetic tradition (*Hadith*)⁴⁰.

The understanding of the prohibition of interfaith marriage as a provision derived from the texts of the Quran and the Prophet's Hadith serves as compelling evidence that, within the religious context, specific regulations of various religious norms heavily rely on textual sources. In other words, the dominance of texts determines the entire sequence of worship, beliefs, and religious rituals in daily life. As referred to by Amin Abdullah, this concept is the "textual civilisation" (*hadharatal-nas*) and stands as a fundamental characteristic of Islamic culture. Nevertheless, Amin continues, it must be promptly acknowledged that texts are highly limited while the historical evolution of human life consistently progresses.⁴¹ The exposition above further elucidates the theocentric dimension within the formulation of Islamic jurisprudence. It is commonly understood that jurisprudence is often assumed to be the "spokesperson" for the provisions outlined in the Quran and the sayings of the Prophet,⁴² essentially serving as a representation of Sharia law⁴³. The renowned definition states that jurisprudence is the legal formulation deduced by scholars from general provisions, both explicitly stated in the Quran and extrapolated from the Prophet's sayings. Such a definition, regardless of debates concerning the distinction between jurisprudence and Sharia law, shapes a mindset aligning jurisprudence as an interpretation of religious teachings with the Quran and Hadith as sources of those teachings themselves. In the words of Arkoun, it constitutes the sacralisation of religious thought (*taqdisal-afkaral-diniy*)⁴⁴.

In contrast to the theocentric formulation of Islamic jurisprudence, the existence of human rights instruments that place humans as the focal point of the law does not impose religious prohibitions on individuals for entering into marriages. This can be understood from the historical background of the formation of human rights instruments, inseparable from the international community's concerns over heinous and brutal actions against various individuals and groups, including the violence perpetrated by state authorities.⁴⁵ Another concern stems from the

³⁹ Kementerian Agama Republik Indonesia, 'Qs. Al-Nisa: 9', in *Al-Quran*, Qur'an Kemenag (Jakarta: Kementerian Agama RI, 2022), <https://quran.kemenag.go.id/>.

⁴⁰ Ahmad Rajafi, *Nalar Hukum Keluarga Islam Di Indonesia*, 194.

⁴¹ M. Amin Abdullah, *Multidisplin, Interdisiplin Dan Transdisiplin: Metode Studi Agama Dan Studi Islam Di Era Kontemporer* (Yogyakarta: Litera Cahaya Bangsa, 2022), 74.

⁴² Wahbah al Zuhaili, *Al-Wajiz Fi Ushul al-Fiqh* (Beirut: Dar al-Fikr, n.d.), 24.

⁴³ Ahmad Muhtadi Anshor, 'Fiqh and Progressive Law: Study of Inequality and Racial Issues in America', *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 11, no. 1 (1 April 2021): 8.

⁴⁴ Lukman S. Thahir, 'Kritik Sakralisasi Pemikiran Keagamaan [Mengkaji Pemikiran Muhammad Arkoun]', *Tarjih: Jurnal Tarjih dan Pengembangan Pemikiran Islam* 4, no. 1 (8 July 2002): 75.

⁴⁵ Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia Dan Hukum Islam* (Jakarta: Komisi Nasional Hak Asasi Manusia, 2003), 16.



oppression of minority groups in Eastern and Central Europe following World War I. This led to the emergence of two main concepts within human rights related to the protection of humanity: the idea of individual rights projected as the safeguarding of each individual and the concept of collective protection aimed at ensuring the dignity and status of minority groups.⁴⁶

Therefore, the law constructed within the narrative of human rights instruments serves as a defence of humanitarian aspects. As noted by Abdul Manan, the humanistic axis developed within human rights instruments is grounded in several principles that can be seen as an implementation of the intended defence. One of these principles is the principle of fundamental freedoms, encompassing individual freedom, prohibition of slavery and servitude, guarantees of individual dignity both in legal terms and in legislation, prohibition of persecution, prohibition of cruel punishment and treatment, freedom of thought, freedom of expression and association, freedom to use personal property, and the right to protect one's reputation and honour.⁴⁷

Another principle established within human rights instruments, particularly regarding family matters, is freedom for individuals to choose their life partner. Similarly, it includes women's rights to live and secure personal freedom in the context of family life and their social lives. This principle also involves ensuring a child's right to education. Overall, the protection of these intended rights, as stated by Abdul Manan, is described as protection under the principle of family protection.⁴⁸ The historical background and principles embraced within these human rights instruments provide critical explanations regarding the freedom to choose a life partner, as marriage is declared an individual's fundamental right that must be protected without interference based on differences in religion and citizenship status. This is closely linked to the principles of freedom and family protection guaranteed in human rights instruments, alongside the recognition that having a life partner and a family is a natural human instinct that should be safeguarded⁴⁹.

The absence of a prohibition on interfaith marriages was also brought up in the Counter Legal Draft of the Compilation of Islamic Law (CLD-KHI), one of its visions being the enforcement of human rights (*iqamat al-huquqal-insaniyah*). CLD-KHI is a document of the struggle of feminism activists in upholding gender freedom, equality and justice, which is oriented towards the feminist legal theory paradigm.⁵⁰ In the name of upholding human rights, interfaith marriage does not become an issue that should be prohibited as long as it remains within the boundaries of achieving the goal of marriage. The following are excerpts from Article 49, paragraphs 1 to 3, outlined in the CLD-KHI.

"Marriage between a Muslim and a non-Muslim is permissible as long as it remains within the boundaries of achieving the goal of marriage."

⁴⁶ Ibid.

⁴⁷ Abdul Manan, *Perbandingan Politik Hukum Islam Dan Barat* (Jakarta: Kencana, 2018), 193.

⁴⁸ Ibid.

⁴⁹ Ahmad Kosasih, *HAM Dalam Perspektif Islam: Menyingkap Persamaan Dan Perbedaan Antara Islam Dan Barat* (Jakarta: Salemba Diniyah, 2003), 86.

⁵⁰ Aisyah Chairil dan Henri Shalahuddin, "Studi Kritis Feminist Legal Theory Menurut Perspektif Islamic Worldview", *Mimbar Hukum Universitas Gadjah Mada*, Vol. 33, No. 1 Tahun 2021, 189.



"Marriage between a Muslim and a non-Muslim is conducted based on the principle of mutual respect and upholding the freedom to practice their respective religions."

"Before marriage takes place, both prospective spouses need to gain understanding and explanations regarding marriage between a Muslim and a non-Muslim, thus becoming aware of all possibilities that may arise due to such marriage"⁵¹.

The formulation of the clause in CLD-KHI above aligns with the legal concept of interfaith marriage outlined in human rights instruments, categorising marriage not as a dimension of theocentrically oriented worship but as a contract based on freedom principles grounded in the agreement of both parties⁵². This is further emphasised in DUHAM Article 16, paragraph (2), stating that marriage is deemed to occur solely based on the full, free consent of both prospective spouses. Thus, from the anthropocentric perspective of human rights, marital issues heavily rely on the protection of an individual's rights and freedoms to undergo such unions.⁵³ From this anthropocentric perspective, various reasons for prohibiting interfaith marriage, such as concerns about the erosion of faith or the process of apostasy for Muslims or their descendants resulting from interfaith marriage, are no longer contested. This is because religious belief itself heavily depends on an individual's freedom to believe or disbelieve. This aligns with Article 18 of DUHAM, which explicitly states the freedom of an individual to choose their believed religion, including the freedom to convert religions.⁵⁴

Within this aspect, concerns among Muslim countries united in the Organization of Islamic Cooperation (OIC) have arisen, leading to the formulation of human rights based on the Quran and Sunnah. This was declared in Cairo, Egypt, on August 5, 1990, and later referred to as the Cairo Declaration.⁵⁵ One of the aspects emphasised pertains to the prohibition of interfaith marriage, declared in UDHR as a free fundamental right, whereas the Cairo Declaration remains bound by Quranic and Hadith provisions prohibiting such marriages. The fundamental concept asserted in the intended declaration is an individual's freedom bound by morality and religious regulations⁵⁶.

Thus, the emergence of the Cairo Declaration not only stands as a counterbalance to the UN-produced DUHAM but also aims to prove that within Islamic teachings, respect for an individual's human rights is comprehensive, particularly concerning marriage, as introduced in various Quranic verses.⁵⁷ The

⁵¹ Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan Hukum Islam*, 'Pembaruan Hukum Islam: Counter Legal Draft Kompilasi Hukum Islam' (Jakarta: Pokja PUG Depag, 2004).

⁵² Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam Dan Counter Legal Draft Kompilasi Hukum Islam Dalam Bingkai Politik Hukum Indonesia* (Bandung: Marja, 2014), 221.

⁵³ Ahmad Kosasih, *HAM Dalam Perspektif Islam: Menyingkap Persamaan Dan Perbedaan Antara Islam Dan Barat*, 88.

⁵⁴ *Ibid.*, 58.

⁵⁵ Nurul Amin Hudin, 'Dilema Penggunaan "Syariah" Dalam Deklarasi-Deklarasi HAM Islam', *Living Islam: Journal of Islamic Discourses* 2, no. 1 (30 June 2019): 38, <https://doi.org/10.14421/lijid.v2i1.1879>.

⁵⁶ Ricky Santoso Muharam, 'Membangun Toleransi Umat Beragama di Indonesia Berdasarkan Konsep Deklarasi Kairo', *Jurnal HAM* 11, no. 2 (28 August 2020): 271, <https://doi.org/10.30641/ham.2020.11.269-283>.

⁵⁷ Agus Dedi Putrawan, 'Membumikan "Deklarasi Kairo" Di Indonesia: Perlindungan Terhadap Hak Anak Dan Keluarga', *TASAMUH* 13, no. 2 (1 June 2016): 185.



Cairo Declaration is presented not only as a competitor to the UN's human rights documents based on their universality but also accommodate the Muslim community. In Islam itself, the specific appreciation for women's rights and children's rights is highly upheld. The teachings of human rights in Islam existed long before the birth of UN documents. Islam liberates children from murder (such as burying baby girls alive), and discrimination, as children are entrusted by Allah, placing responsibility upon parents. Children are the future generation upon which the civilisation of humanity rests⁵⁸.

Nevertheless, within certain limits, there are similarities between UDHR and the Cairo Declaration in terms of respect for human dignity. This is evident - among other instances - in Articles 1 and 2 of UDHR and Article 1 of the Cairo Declaration, both placing the equality of human dignity as a fundamental element that must be protected without discrimination. Similarly, in Article 7 of UDHR and Article 19, Section A of the Cairo Declaration, the principle of equality before the law is formulated.⁵⁹ The polarisation mentioned above, theocentric and anthropocentric, can be reconciled under one doctrine: the ultimate goal of the formulation of the law, both Islamic and human rights-related laws, which pivots on the protection of human dignity. The study of *maqashid al-syariah* in the discourse of Islamic law is clear evidence of the intended protection. Overall, the form of protection contained in the study of *maqashid al-syariah* centres on efforts to protect the *karamah insaniyah*, including the protection of religion, soul, mind, property and offspring.⁶⁰

The protection of *karamah insaniyah* in Islamic law, which challenges the theocentric doctrine, becomes clearer when examining the interpretations of later scholars regarding the concept of *maqashid al-shariah*. One such scholar is Jasser Audah, who emphasizes evolution in the preservation of *dharuriyat al-khamsah*. In classical interpretations, *hifd al-din* is often associated with the prohibition of changing religions. However, Jasser Audah reinterprets it as the foundation for justifying an individual's freedom of religion and belief.⁶¹ The guarantee of freedom of religion and belief cannot be fully realised without ensuring the implications of this freedom for individuals. Interfaith marriage, for instance, can be seen as an implication of religious freedom, as suggested by Abdullah Saeed. This view is supported by explicit statements in the Qur'an, including verses that guarantee individual freedom to believe or disbelieve, verses that depict the Prophet Muhammad not as a coercer, and verses emphasising God's exclusive prerogative in providing guidance.⁶²

Bringing together the theocentric and anthropocentric dimensions as the basis of Islamic law and human rights has an impact on justifying interfaith marriage. These findings surely reject the findings of Mashood A. Baderin, who views interfaith marriage as one aspect of the study between Islamic law and human rights that

⁵⁸ Zubair, *Stilistika Arab: Studi Ayat-Ayat Pernikahan Dalam Al Quran* (Jakarta: Amzah, 2017).

⁵⁹ Izzuddin Washil and Ahmad Khoirul Fata, 'HAM Islam dan Duham PBB: Sebuah Ikhtiar Mencari Titik Temu', *MIQOT: Jurnal Ilmu-ilmu Keislaman* 41, no. 2 (22 January 2018): 433, <https://doi.org/10.30821/miqot.v41i2.394>.

⁶⁰ Hisyam, *Maqashid al-Syariah 'ind Imam al-Haramayn* (Beirut: Maktabah al-Rusyd, 1998), 167

⁶¹ Holilur Rohman, *Maqashid al-Syariah: Dinamika, Epistemologi dan Aspek Pemikiran Ushuli Empat Madzhab* (Malang: Intrans, 2019), 54.

⁶² Eva Fadhillah dan Yusdani, *Fikih Kebebasan Beragama: Telaah atas Pemikiran Abdullah Saeed* (Yogyakarta: Pustaka Satu, 2020), 60.



cannot be reconciled because, in the analysis, there are fundamental differences between sharia and human rights in the context of interfaith marriage.⁶³ In addition, a sociological-historical analysis of the prohibition of interfaith marriage, especially the prohibition for Muslim women to marry non-Muslim men, can also reject the doctrine of prohibition. In the sociological-historical analysis, the doctrine of prohibition is closely related to sociological and historical conditions that show the inferior position of a woman. This is evident from the narrative presented as the reason for the prohibition, which is about the fear of a woman falling into her husband's heretical beliefs.⁶⁴

In the context of Indonesian law, the above concerns can also be rejected by the many legal instruments that guarantee the freedom of a person to carry out the teachings of his religion and beliefs. In other words, through existing legal instruments, one is required to respect the religiosity of others. In this case, legal instruments related to guaranteeing one's freedom of religion and belief are placed as the state's footing in carrying out its obligation to protect the rights of its people.⁶⁵ The national legal instruments are the 1945 Constitution (UUD 1945) and Law No. 39/1999 concerning Human Rights (Law 39/1999). In the 1945 Constitution, Article 28I paragraph (1) explicitly states that there is an obligation for a person to respect the diversity of others as part of human rights that no one can contest. Likewise, in Law 39/1999, Article 22 also states that everyone is free to embrace their respective religions and has the freedom to worship according to their religion and beliefs.⁶⁶

Conclusion

Placing the study of interfaith marriage within the axis of fiqh's theocentrism and human rights law's anthropocentrism leads to the conclusion that every legal formulation intertwines with the aspects that form its foundation. Fiqh's theocentrism has birthed the doctrine prohibiting interfaith marriage, as marriage fundamentally constitutes worship. Conversely, within the human rights anthropocentrism paradigm, marriage is a transaction between individuals based on complete freedom. Hence, within this paradigm, interfaith marriage does not constitute a legally prohibited act. Another point to be made in this conclusion is the shift in the paradigm of Islamic legal theocentrism, evident in contemporary thinkers' new perspectives on maqashid syariah. This shift suggests a convergence between Islamic law and human rights, both oriented towards protecting karamah insaniyyah (human dignity). This paradigm shift also impacts the justification of interfaith marriage. In Indonesia's legal system, individuals are guaranteed the freedom to practice their chosen religion and the obligation to respect others' beliefs. Furthermore, concerns about the "shallowing" of the creed of interfaith couples are addressed within this framework.

⁶³ Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia dan Hukum Islam* (Jakarta: Komnas HAM, 2010), 148.

⁶⁴ Adang Djumhur Salikin, *Reformasi Syariah dan HAM dalam Islam* (Yogyakarta: Gama Media, t.th.), 211.

⁶⁵ Adam Muhshi, *Teologi Konstitusi: Hukum dan Hak Asasi Manusia atas Kebebasan Beragama di Indonesia* (Yogyakarta: LkiS, 2015), 36.

⁶⁶ Syamsul Arifin, dkk., *Hak Asasi Manusia untuk Kebebasan Beragama dan Berkeyakinan di Indonesia* (Malang: PUSAM, 2014), 236.



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