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## **Cancellation of Marriage Due to Apostasy in Islamic Law and Human Rights: A Comparative Analysis of Indonesia and Malaysia**

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### **Abstract:**

The issue of apostasy, especially the annulment of marriage on the grounds of apostasy, is a highly intricate and contentious issue at the intersection of Islamic law and human rights. This article seeks to undertake a critical comparative analysis of the legal frameworks, jurisprudence, and practical applications surrounding this issue within Indonesia and Malaysia—two prominent Muslim-majority countries. Through in-depth insight into the relevant laws and court cases with scholarly literature reviews, this paper examines the different approaches taken by these countries and the deeply entrenched challenges in resolving the principles of Islamic legal doctrine with the main tenets of international human rights. This examination requires treading the line carefully, as religious traditions and individual freedoms clash. An inclusive and balanced dialogue can be done to further the protection of human rights and respect the rich tapestry of religious and cultural perspectives. Indeed, the proper application of Islamic law can be viewed as a fundamental human right since the freedom to practice one's faith is part and parcel of the core tenets of international human rights standards. It is in a holistic approach—one that respects both Islamic legal principles and universal human rights—that apparent tensions can be resolved and fair treatment can be ensured for everyone. Moreover, the Islamic jurisprudents take the invalidation of marriage by way of apostasy as unanimous since it is a permissible action in case of a defect or some damage in the marriage. However, clear and specific regulations

are urgently needed with a view to legal certainty and unity within the community.

**Keywords:** cancellation marriage; apostasy; human rights.

## Introduction

The cancellation of marriage due to apostasy (*riddah*) has a significant impact on human rights, particularly the freedom of religion. Apostasy, or the abandonment of one's faith, is a controversial issue in Islamic law since it poses complex legal and human rights challenges. Its implications are diverse, influencing individual rights and broader legal and social frameworks. While Islamic law considers *riddah* as grounds for the annulment of marriage, its application differs in Indonesia,<sup>1</sup> where the Religious Court requires evidence of marital disharmony resulting from apostasy,<sup>2</sup> while in Malaysia, the significant state intervention by authorities who determine an individual's faith raises concerns about legal pluralism and religious freedom.<sup>3</sup> International human rights law guarantees the freedom of religion, but its implementation remains ambiguous, leading to protection gaps, particularly in asylum claims based on apostasy.<sup>4</sup> Although the cancellation of marriage due to *riddah* presents problems for human rights, it highlights the need for a balanced approach that respects religious traditions and upholds international human rights standards through dialogue and legal reform to protect individual freedoms in diverse contexts.

The Islamic perspective on the annulment of marriage typically views it as a permissible action when there is damage or defect in the marriage.<sup>5</sup> In contrast, the Christian view on annulment considers it an invalid marriage due to the continued relationship or binding of one of the parties.<sup>6</sup> These differing perspectives on marriage cancellation due to apostasy raise questions about the balance between the application of Islamic law and the protection of human rights. Researchers have highlighted the need to reform marriage registration policies in Indonesia and Malaysia to address the issue of unregistered marriages and ensure the fair treatment of divorcees.<sup>7</sup> Research on Apostasy cases in Malaysia has revealed inconsistencies

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<sup>1</sup> Euis Nurlaelawati, "For The Sake of Protecting Religion: Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 10, no. 1 (June 7, 2016): 89, <https://doi.org/10.15642/JIIS.2016.10.1.89-112>.

<sup>2</sup> Evra Willya, Nurlaila Harun, and Afni Anom, "Lawsuits Related to Divorce Due to Apostasy in Bitung Religious Court," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (August 29, 2022): 53–69, <https://doi.org/10.30821/miqot.v46i1.877>.

<sup>3</sup> Michael Kirby, "Fundamental Human Rights and Religious Apostasy: The Malaysian Case of *Lina Joy*," *Griffith Law Review* 17, no. 1 (January 2008): 151–82, <https://doi.org/10.1080/10383441.2008.10854606>.

<sup>4</sup> 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 (May 11, 2024): 791–820, <https://doi.org/10.22373/sjhk.v8i2.19479>.

<sup>5</sup> Evi Yulianti Siregar, Indra Harahap, and Abu Syahrin, "Pembatalan Pernikahan Dalam Perspektif Islam Dan Kristen," *ANWARUL: Jurnal Pendidikan Dan Dakwah* 3, no. 3 (June 1, 2023): 528–38, <https://doi.org/10.58578/anwarul.v3i3.1176>.

<sup>6</sup> Evi Yulianti Siregar, Indra Harahap, and Abu Syahrin, "Pembatalan Pernikahan Dalam Perspektif Islam Dan Kristen," *ANWARUL* 3, no. 3 (June 1, 2023): 528–38, <https://doi.org/10.58578/anwarul.v3i3.1176>.

<sup>7</sup> Arifki Budia Warman et al., "Reforming Marriage Registration Policies in Malaysia and Indonesia," *BESTUUR* 11, no. 1 (August) (April 13, 2023): 61, <https://doi.org/10.20961/bestuur.v11i1.66320>.



in handling such matters. A study by Parut found that religious and sectarian norms in the legal systems of Malaysia, Indonesia, and Brunei contribute to discriminatory practices. Interfaith couples face legal and administrative challenges, such as the rejection of marriage registration and the risk of social stigma, reflecting tensions between religious authorities and state governance. Comprehensive legal reforms addressing religious concerns and protecting individual rights could provide valuable insights and recommendations for implementation by those responsible for legal practices in these countries.<sup>8</sup>

Research by Hussin suggests that Malaysia's laws on apostasy are an effort to address three key threats to the faith and thought of the Muslim community: deviation from the creed, human rights demands that contravene Islamic principles, and extremism and radicalism. Islamic legal reforms in Malaysia have been undertaken to address these threats and maintain the nation's security and harmony through measures to contain heretical teachings, counteract the influence of foreign ideologies, and handle religious extremism.<sup>9</sup> The research by Kirby examines the Lina Joy case in Malaysia, highlighting the conflict between the constitutional guarantee of religious freedom and the religious interpretations that prohibit apostasy. In essence, this paper discusses how the Malaysian courts have faced the dilemma between human rights that guarantee freedom of religion and Islamic law that prohibits and sanctions apostasy.<sup>10</sup>

Research by Laelawati<sup>11</sup> has revealed that the issue of apostasy in Indonesia has led to ambiguity in the law's implementation. The study found that decisions by Indonesian religious courts in divorce cases involving apostasy are often inconsistent, reflecting the diverse understandings among judges regarding the doctrine of religious protection. Although Islamic law in Indonesia generally recognises apostasy as grounds for divorce, its application in civil cases, particularly those related to child custody, is often non-uniform. Some judges prioritise the child's well-being over the apostate parent's religious beliefs, while others emphasise the protection of the child's religion. This inconsistency indicates a challenge in balancing Islamic legal principles, human rights, and the child's best interests. The research highlights the need for clearer and more comprehensive guidelines in handling divorce cases involving apostasy to ensure justice and protection for all parties, especially the children.

Previous studies have examined the issue of the annulment of marriage due to apostasy. However, earlier research has not adequately explored ways to balance the application of Islamic law and the protection of human rights. This study aims to provide a more comprehensive perspective on the complexities of this challenge by further analysing and comparing practices in Indonesia and Malaysia. This research intends to explore in more depth the formulation of laws that can accommodate human rights interests and Islamic legal principles related to the annulment of

<sup>8</sup> Wenslaus Parut et al., "Discrimination in The Registration of Marriages of Different Religions: Regulation and Practice in Southeast Asia," *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 1 (August 30, 2024): 90–101, <https://doi.org/10.30983/alhurriyah.v9i1.8544>.

<sup>9</sup> Mohd Norhusairi Mat Hussin et al., "Kajian Isu-Isu Berkaitan Pemeliharaan Akidah Dan Pemikiran Umat Islam Di Malaysia: An Analysis Of Issues Relating To Aqidah And Beliefs Among Muslims In Malaysia," *Malaysian Journal of Syariah and Law* 11, no. 2 (December 5, 2023): 366–80, <https://doi.org/10.33102/mjsl.vol11no2.454>.

<sup>10</sup> Kirby, "Fundamental Human Rights and Religious Apostasy."

<sup>11</sup> Nurlaelawati, "For The Sake Of Protecting Religion."



marriage due to apostasy in these two countries. This research also aims to explore the reformulation of laws on the annulment of marriage due to apostasy, aiming to balance Islamic law and human rights. The trend of increased conversion to Islam and subsequent apostasy has sparked debate about its implications for marital status and individual rights. Researchers highlight the need for marriage policy reforms in Indonesia and Malaysia to address unregistered marriages and ensure fair treatment for widows/widowers, emphasizing comprehensive legal reforms to address religious issues and protect individual rights. On the other hand, the cancellation of marriage due to apostasy in Indonesia raises concerns about the protection of human rights and religious freedom. While Islamic law may consider apostasy as grounds for the dissolution of a marriage, there are arguments that such practices can infringe on an individual's right to freedom of religion and belief, as enshrined in various international human rights instruments. A comparative analysis of the legal frameworks and practices in Indonesia and other Muslim-majority countries could provide valuable insights into the balancing of Islamic principles and human rights norms in the context of marriage and apostasy.

## Method

This research paper uses comparative legal analysis to examine the complexities of apostasy and its implications for marriage within the contexts of Islamic law and human rights.<sup>12</sup> The study involves an in-depth examination of relevant laws, court cases, and scholarly publications from Indonesia and Malaysia to elucidate the tensions between Islamic jurisprudence principles and international human rights standards, particularly the right to freedom of religion and belief. The research will be structured as follows: an overview of the Islamic legal framework on apostasy and its impact on marriage, exploring the classical Islamic jurisprudence on apostasy and its potential consequences, including the possible annulment of marriage; a comparative analysis of apostasy laws and practices in select Muslim countries, examining the legal and judicial approaches to apostasy and its impact on marital status; a discussion on reconciling Islamic law and human rights principles, addressing the challenges and potential avenues for reconciliation; and a conclusion and recommendations, summarising the key findings and proposing potential solutions or reform measures to address the tensions between Islamic law and human rights in the context of apostasy and marriage.

## Results and Discussion

### Apostasy, an Islamic Legal Perspective

Apostasy, the act of abandoning one's religious faith, is a complex and controversial issue in the context of Islamic law and human rights. In Indonesia, the legal implications of apostasy in the context of marriage are particularly noteworthy. While Islamic tradition emphasises the voluntary nature of faith, the execution of apostates has been a subject of debate, with scholars arguing that such rulings may not be applicable in the modern, globalised world. In Indonesia, the tension between Islamic family law and national law is evident, as people often prefer to follow the

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<sup>12</sup> Jürgen Basedow, "Should Different Types of Methodology in Comparative Legal Research Be Combined in the One Method?," *Latest Thinking*, 2017, <https://doi.org/10.21036/LTPUB10300>.



*fiqh* (Islamic jurisprudence) over the codified regulations.<sup>13</sup> The challenges faced by Muslim converts, or *mualaf*, in Malaysia, exemplify the struggles that can arise after conversion to Islam.<sup>14</sup> The phenomenon of *mualaf* seeking to leave Islam after conversion highlights the complexity of this issue and the need for authorities to address it regularly. The Shariah Court in Malaysia handles the matter of apostasy, where individuals seeking to leave Islam must apply for a formal declaration of apostasy. Scholars have argued that the legal injunction to execute apostates during the Prophetic era was a way to discourage defection from the Muslim military forces, and such rulings may not be applicable in a globalised world where an ideal Islamic polity is unlikely to exist.<sup>15</sup>

*Riddah* is an Arabic term that signifies apostasy and is often used interchangeably with *irtidad*. However, there is a subtle distinction between the two. *Riddah* specifically refers to the act of a Muslim abandoning their faith and becoming a non-believer, while *irtidad* denotes the act of leaving Islam for another religion. A person who commits apostasy is known as a *murtad*.<sup>16</sup> The position that the marriage of a Muslim woman to a non-Muslim man is prohibited is based on the Qur'anic verse (2:221), which states: "And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. [2:221]" This verse is interpreted by jurists as a clear prohibition on the marriage of Muslim women to non-Muslim men.

When a person commits apostasy while being married, an important question arises regarding the validity of their marriage. Does the marriage remain legally valid according to classical Islamic jurisprudence? To address this issue, it is essential to first examine the broader legal perspective on interreligious marriage within Islamic law. To understand the legal aspects of interreligious marriage, it is important to look at the fundamental pillars and conditions that make a marriage valid. A marriage is recognised as legitimate when it meets these primary requirements, which include the bride and groom, the marriage contract, a guardian, witnesses, and the *mahr* (dowry). Each of these elements has specific conditions that must be fulfilled. When it comes to interfaith marriage, one of the most essential conditions is that both the bride and groom must be Muslim, as this plays a crucial role in determining the validity of the union. The majority of Islamic scholars (*jumhur ulama*) agree that a Muslim woman is not allowed to marry a non-Muslim man, including those from the People of the Book (*ahl al-kitab*), such as Jews and Christians. However, a Muslim man is allowed to marry a non-Muslim woman from the People of the Book. This rule indicates that the spouse's religion is an essential requirement for the

<sup>13</sup> Junaidi Abdillah, Mahdaniyal Hasanah Nuriyyatiningrum, and Nafila Inarotussofia Miftahunnaja, "Unity of Sciences (UoS) as a Paradigm for Indonesian Islamic Family Law Reconstruction.," *Al-'Adalah* 19, no. 1 (June 20, 2022): 99–122, <https://doi.org/10.24042/andalah.v19i1.10189>.

<sup>14</sup> Nazihah Rusli and Firdaus Khairi Abdul Kadir, "The Challenges Encountered by Mualaf After Conversion to Islam: A Study on The Apostasy (Murtad) Cases in Malaysia," *International Journal of Academic Research in Business and Social Sciences* 12, no. 8 (August 10, 2022): Pages 538-544, <https://doi.org/10.6007/IJARBSS/v12-i8/14050>.

<sup>15</sup> Mubamad Ali, "Fatwas on Inter-Faith Marriage in Indonesia," *Studia Islamika* 9, no. 3 (2002): 1–33, <https://doi.org/10.15408/sdi.v9i3.658>.

<sup>16</sup> Syamsuddin Syamsuddin, "Antara Hukum Murtad dalam Islam dengan Kebebasan Beragama dalam Hak Asasi Manusia (HAM)," *El-Mashlahah* 11, no. 1 (June 28, 2021): 44–59, <https://doi.org/10.23971/elma.v11i1.2623>.



validity of a marriage.<sup>17</sup> Islamic legal scholars hold three main perspectives on the issue of interfaith marriage. The first view maintains that marriage is only valid between two Muslim spouses. The second allows for a Muslim man to marry a non-Muslim woman under specific conditions. The third position, widely upheld, asserts that a Muslim woman cannot marry a non-Muslim man. The majority of scholars agree that while a Muslim man may marry a non-Muslim woman, this is only permissible if she meets certain criteria. Most importantly, she must be from the ahl al-kitab or those who follow divinely revealed scriptures, such as Christians and Jews.

Islamic scholars have identified three main categories of non-Muslim individuals about marital eligibility. The first group comprises those who believe in material objects or idols, such as stone. The second group includes those who follow religions with quasi-sacred texts, like the Majusi faith. The third and final group pertains to those who adhere to religions with recognised sacred scriptures, namely the Abrahamic faiths of Christianity and Judaism, referred to as ahl al-kitab. While a minority of jurists, such as Abu Daud, have considered interreligious marriages between a Muslim man and a non-Muslim woman with quasi-sacred scriptures to be lawful,<sup>18</sup> the consensus among jurists is that the only permissible interreligious marriage is between a Muslim man and a non-Muslim woman from the Abrahamic faiths. Jurists have agreed to prohibit both Muslim men and women from marrying non-Muslims.

There are differing opinions among Islamic scholars regarding the consequences of apostasy on marriage, though the majority opinion is that the marriage is automatically dissolved upon the declaration of apostasy.<sup>19</sup> The underlying rationale is that marriage is considered a legal contract, and one of the conditions for its validity is that both spouses must be Muslim. Once a spouse becomes an apostate, the marriage is deemed null and void, and the marital obligations no longer bind the Muslim spouse. This view is based on the Quranic injunction that prohibits Muslim women from marrying non-Muslim men. However, some contemporary scholars argue that the dissolution of marriage due to apostasy should not be automatic, and the Muslim spouse should be allowed to rectify their faith before the marriage is terminated. They contend that the Quranic verses prohibiting interreligious marriage apply only to the initiation of the marriage contract, not its continuation.

### Apostasy Implications in Marriage in Malaysia

The legal framework regarding apostasy in Malaysia is complex, stemming from the interplay between religious and constitutional law. Apostasy, which denotes the renunciation of Islam, is not consistently addressed across the country, as religious matters are under the purview of state authorities. This has resulted in diverse approaches and legal interpretations, particularly concerning the role of

<sup>17</sup> Johanna Marie Buisson, "Interfaith Marriage for Muslim Women: This Day Are Things Good and Pure Made Lawful Unto You," *CrossCurrents* 66, no. 4 (December 2016): 430–49, <https://doi.org/10.1111/cros.12211>.

<sup>18</sup> George N. Sfeir, "The Place of Islamic Law in Modern Arab Legal Systems: A Brief for Researchers and Reference Librarians," *International Journal of Legal Information* 28, no. 1 (2000): 117–26, <https://doi.org/10.1017/S073112650000891X>.

<sup>19</sup> Satmi Utari Aziz, "Annulment of Marriage Due to Husband's Sexual Disorder (Study of Yogyakarta Religious Court Decision Number: 176/Pdt.G/2019/PA. Yk)," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (September 26, 2023): 197, <https://doi.org/10.22373/ujhk.v6i1.17412>.



Syariah courts and the constraints imposed by the Federal Constitution. The interplay between the Federal Constitution and the jurisdiction of Syariah courts shapes the Malaysian legal framework on apostasy. While the Federal Constitution enshrines the guarantee of religious freedom under Article 11 (1), this right is not absolute for Muslims, particularly in matters of apostasy.<sup>20</sup> Significantly, Article 121 (1a) 1988 of the Constitution places issues of Islamic law, including apostasy, under the domain of Syariah courts, thereby limiting the role of civil courts in these cases. This jurisdictional tension was exemplified in the Lina Joy case, where the civil courts upheld that only Syariah courts could decide on apostasy, effectively restricting the freedom of religion for Muslims in Malaysia.<sup>21</sup>

Across the states of Malaysia, the legal framework regarding apostasy has historically exhibited considerable variation. In certain jurisdictions, the act of renouncing Islam has been codified as a criminal offence, accompanied by mandates for a period of "rehabilitation" for those seeking to depart from the faith.<sup>22</sup> Conversely, Negeri Sembilan has distinguished itself by permitting Muslims to formally apply for a change of religion, a process facilitated through the Sharia High Court and involving consultations with the Mufti's Department.<sup>23</sup> The diverse legal landscape surrounding apostasy in Malaysia has prompted a range of scholarly perspectives and social discourse. While some Islamic scholars have advocated for a more lenient approach, emphasising the spiritual over temporal implications, others have maintained a stricter interpretation.<sup>24</sup> Amid this intellectual debate, a growing demand for a comprehensive review of the country's apostasy laws has emerged, as concerns have been raised that current practices may not align with the broader principles of religious freedom enshrined in the nation's legal framework. The tension between religious law and constitutional rights continues to be a point of contention, underscoring the complexities involved in reconciling religious authority with individual freedoms.

### Apostasy Implications in Marriage in Indonesia Legal Framework

The legal framework regarding apostasy in Indonesia grants Islamic courts the authority to pronounce the dissolution of marriage in instances where one spouse renounces the Islamic faith. The Compilation of Islamic Law, a codified set of regulations governing family matters, acknowledges that apostasy may disrupt the harmony of a marriage. Law Number 1 of 1974 concerning Marriage does not explicitly regulate marriage status if one spouse changes their religion or becomes apostate. Article 2, paragraph (1) states, "A marriage is legal if it is conducted

<sup>20</sup> Ahmad Masum and Nehaluddin Ahmad, "Freedom of Religion and Apostasy under International Law: With Special Reference to Article 11 of the Malaysian Federal Constitution," *Journal of East Asia and International Law* 6, no. 2 (September 30, 2013), <https://doi.org/10.14330/jeail.2013.6.2.05>.

<sup>21</sup> R. Sivaperegasam P. Rajanthiran, "The Impact of Art. 121 (1A) 1988 On Art. 11 - The Freedom Of Religion in The Federal Constitution of Malaysia: The Apostasy Case of Lina Joy," *SEJARAH* 26, no. 1 (June 13, 2017): 117–31, <https://doi.org/10.22452/sejarah.vol26no1.8>.

<sup>22</sup> P. Rajanthiran.

<sup>23</sup> Mohd Al Adib Samuri and Muzammil Quraishi, "Negotiating Apostasy: Applying to 'Leave Islam' in Malaysia," *Islam and Christian-Muslim Relations* 25, no. 4 (October 2, 2014): 507–23, <https://doi.org/10.1080/09596410.2014.907054>.

<sup>24</sup> Razali Musa et al., "Examining The Social Implications Of Apostasy Punishment In Islamic Scholarly Discourse: A Case Study Of Its Application In Malaysia," *Nanotechnology Perceptions*, October 18, 2024, 1755–67, <https://doi.org/10.62441/nano-ntp.vi.2698>.



according to the laws of each party's religion and belief." This provision implies that the validity of a marriage is highly dependent on the religious laws adhered to by the couple. If one spouse converts to another religion, it may affect the validity of the marriage according to certain religious laws, particularly in Islam, which requires both spouses to share the same faith.<sup>25</sup> Religious conversion by one spouse is often used as grounds for divorce, as differences in belief can lead to disharmony within the household. In this context, Article 116(h) of the Compilation of Islamic Law (KHI) states that grounds for divorce include: "One party becomes apostate or changes religion, causing disharmony in the household." Religious conversion or apostasy by either the husband or wife, according to the Compilation of Islamic Law, can be used as a reason to dissolve the marriage. Article 75 of the KHI specifies that the annulment of marriage does not have retroactive effects on a marriage that is annulled due to one party's apostasy. However, to be legally valid, a divorce on the grounds of apostasy must still be processed through the court. This is according to Article 39, paragraph (1) of Law Number 1 of 1974 concerning Marriage, which stipulates, "Divorce can only be carried out before a court session after the court has made efforts to reconcile both parties".<sup>26</sup>

However, the guidance provided is limited, as the law does not explicitly mandate the annulment of the marriage if the domestic life of the couple remains unaffected by the change in religious belief.<sup>27</sup> In practice, judges in the Indonesian Islamic court system often exercise their *ex officio* rights, or the authority to act on their own initiative, in cases where one spouse has converted to another religion.<sup>28</sup> This judicial approach indicates a need for clearer legal standards and guidelines regarding marriage annulment due to apostasy, as the current ambiguity in the law

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<sup>25</sup> Kholifatun Nur Mustofa et al., "Religious Authority and Family Law Reform in Indonesia: The Response and Influence of the Indonesian Ulema Council on Interfaith Marriage," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (December 31, 2024): 383–93, <https://doi.org/10.31958/juris.v23i2.11849>.

<sup>26</sup> Abdullah Taufik, "The Settlement Principles and Effectiveness of Divorce by Mediation of Islamic Civil Perspective: A Critical Review of the Supreme Court Regulation," *Justicia Islamica* 18, no. 1 (June 4, 2021): 168–88, <https://doi.org/10.21154/justicia.v18i1.2139>; Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347, <https://doi.org/10.1080/23311886.2023.2206347>; Muhammad Luthfi, Yaris Adhial Fajrin, and Hasnan Bachtiar, "The Existence of 'Urf in the Resolution of Marriage Disputes in Islamic Law: A Living Law Perspective," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 30, 2024): 146–58, <https://doi.org/10.29303/ius.v12i1.1356>; Nirwan Junus et al., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures," *Jambura Law Review* 6, no. 1 (January 31, 2024): 183–205, <https://doi.org/10.33756/jlr.v6i1.19370>; Laras Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *MILRev: Metro Islamic Law Review* 3, no. 2 (December 13, 2024): 236–62, <https://doi.org/10.32332/milrev.v3i2.9950>; Ismail Rumadan and Ummu Salamah, "Settlement Of Divorce Dispute Through The Forum Of Mediation In Judicial Institutions As An Effort Of Legal Protection For The Rights And Interests Of The Child Of Post-Divorce," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 2 (September 22, 2021): 213–26, <https://doi.org/10.18592/sjhp.v21i2.4603>.

<sup>27</sup> Muchimah et al., "Legal Culture and the Dynamics of Religious Interaction in Ritual Practices among Interfaith Marriage | Al-Manahij: Jurnal Kajian Hukum Islam," November 18, 2024, <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/11659>.

<sup>28</sup> Tiara Putri Rahmawati and Septiayu Restu Wulandari, "Analisa Hukum Perihal Murtad Sebagai Alasan Putusnya Perkawinan," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (June 13, 2024): 1925–37, <https://doi.org/10.47467/as.v6i2.6800>.



may lead to inconsistent outcomes. The issue of apostasy in Indonesia is further complicated by the country's blasphemy law, which penalises religious offences. Accusations of blasphemy against apostates can lead to social ostracism and legal repercussions, indirectly influencing the outcomes of apostasy-related divorce cases.<sup>29</sup> This legal framework has been criticised, with calls for reform to protect the fundamental right to freedom of religion and belief.

The lack of clear legal standards in Indonesia also contributes to inconsistencies in court rulings regarding cases of this nature. The Compilation of Islamic Law (KHI) does state that a marriage can be annulled if one spouse apostatises, but it does not explicitly specify whether the divorce should take the form of *fasakh* (annulment) or *talak* (divorce). Furthermore, not all judges apply the same jurisprudence, leading to differing decisions. Most courts still experience inconsistencies in the application of Islamic law and national law, resulting in differing rulings for similar cases. As evidence, there are discrepancies in court decisions regarding divorce due to a husband's apostasy, such as the ruling of the Malili Religious Court in Case No. 121/Pdt.G/2021/PA.MII and the Wonosobo Religious Court in Case No. 2349/Pdt.G/2021/PA.Wsb.

This difference is also caused by the legal basis used by each court. The Malili Religious Court (PA Malili) referred to *Kitab Fiqhus Sunnah* Volume II, page 389, and Article 75 of the Compilation of Islamic Law (KHI), which states that apostasy by one spouse is grounds for the annulment of marriage (*fasakh*). Meanwhile, the Wonosobo Religious Court (PA Wonosobo) based its decision on Law No. 1 of 1974 concerning Marriage, Article 116(f) of the Compilation of Islamic Law (KHI), as well as Supreme Court Jurisprudence No. 237/K/AG/1998 and Supreme Court Circular (SEMA) No. 2 of 2014 state that if a household is no longer harmonious and reconciliation is not possible, divorce may be granted. Therefore, PA Malili ruled that the marriage was legally annulled through *fasakh*, while PA Wonosobo viewed the issue primarily as a case of marital conflict and granted *talaq raj'i* (revocable divorce).

There are fundamental differences in how apostasy (*murtad*) in marriage is handled in Indonesia and Malaysia. In Indonesia, marriage and divorce are regulated by Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) for Muslims. In the context of apostasy, Islamic law considers that if one spouse changes religion, it can serve as grounds for *fasakh*. However, inconsistencies exist in the rulings of Indonesian religious courts. Sometimes, judges decide that marriage is automatically annulled when one spouse apostatises. However, in other cases, judges focus more on marital disharmony caused by religious differences and issue a divorce ruling (*talak*) instead. This results in different legal interpretations, where some judges refer to Shafi'i schools of thought, while others align with Indonesia's positive law. Furthermore, Indonesian law does not provide specific guidelines regarding the rights of spouses who divorce due to apostasy, such as inheritance rights, child custody, and financial support. As a result, court decisions vary depending on the judge handling the case.

<sup>29</sup> Muhammad Khoirur Rofiq, "Pemberian Hak Asuh Anak Dalam Perceraian Karena Peralihan Agama (Murtad)," *Journal of Islamic Studies and Humanities* 6, no. 2 (October 28, 2021): 97–110, <https://doi.org/10.21580/jish.v6i2.8171>.



In Malaysia, Islamic law plays a stronger role in the marriage and divorce system. Muslim marriages in Malaysia are governed by the Islamic Family Law Act and the State Administration of Islamic Law Enactment, which take a more rigid approach to apostasy cases. If one spouse in a Muslim marriage commits apostasy, then the marriage is automatically annulled. Malaysia does not provide an option for divorce by *talaq* in such cases, as marriage between a Muslim and a non-Muslim is not legally valid under Malaysian Islamic law. Additionally, Malaysia has clearer regulations regarding legal consequences after a divorce due to apostasy, such as: 1) Financial support and *mut'ah*: The non-apostatising spouse is still entitled to financial support and compensation. 2) Child custody: Children are presumed to remain Muslim unless the court rules otherwise. 3) Inheritance rights: An apostate spouse loses their right to inherit from their Muslim spouse. Malaysia also has a more structured and standardised legal system, ensuring uniformity in court rulings on apostasy cases. The following table provides a structured comparison of the implications of apostasy in marriage in Indonesia and Malaysia:

**Table 1.** Comparison of Apostasy Implications in Marriage between Indonesia and Malaysia

Aspect	Indonesia	Malaysia
Legal Basis	<ul style="list-style-type: none"> <li>- Law No. 1 of 1974 (Marriage Law)</li> <li>- Compilation of Islamic Law (KHI)</li> <li>- Islamic Jurisprudence (fiqh), particularly from the Shafi'i school of thought</li> </ul>	<ul style="list-style-type: none"> <li>- Islamic Family Law Act</li> <li>- State Administration of Islamic Law Enactment</li> </ul>
Marriage Status if One Spouse Apostatises	Either <i>fasakh</i> (automatic annulment) or <i>talaq</i> (regular divorce), depending on the judge's ruling	Always <i>fasakh</i> (marriage is automatically annulled)
Wife's Rights After Divorce	<ul style="list-style-type: none"> <li>- Entitled to <i>iddah</i> financial support if divorced via <i>talaq</i></li> <li>- If annulled via <i>fasakh</i>, it depends on the judge's ruling</li> </ul>	<ul style="list-style-type: none"> <li>- Entitled to <i>mut'ah</i> (divorce compensation)</li> <li>- Entitled to financial support during <i>iddah</i></li> </ul>
Child's Status After Divorce	No clear standard; typically, children follow the mother's religion or a court decision	Children remain Muslim unless ruled otherwise by the court
Inheritance Rights After Apostasy	<ul style="list-style-type: none"> <li>- The apostate spouse loses inheritance rights from the Muslim spouse</li> </ul>	<ul style="list-style-type: none"> <li>- The apostate spouse is disqualified from inheriting from the Muslim spouse</li> </ul>
Consistency of Court Rulings	Inconsistent (some cases result in <i>fasakh</i> , others in <i>talaq</i> )	Consistently <i>fasakh</i> across all of Malaysia

### Cancellation of Marriage during Apostasy on Human Rights Perspective

Apostasy, or *riddah*, occupies a prominent position in Islamic jurisprudence, where it is generally regarded as a grave offence against the faith. Historically, the



legal injunction to execute apostates during the Prophetic era was primarily a means to discourage defection from the Muslim military forces rather than a comprehensive theological or moral imperative. However, the classical legal doctrine of apostasy in Islam encompasses the explicit renunciation of the faith and any deed or utterance that may imply unbelief, such as denying a fundamental tenet or creed of Islam.<sup>30</sup> Classical Islamic scholars have long debated the definition and consequences of apostasy, with some advocating for severe punishments while others have taken a more lenient approach.<sup>31</sup> In the traditional view, apostasy (known as "*riddah*" in Arabic) is considered a grave offence, often punishable by death in this life.<sup>32</sup> This perspective is based on the interpretation of certain Quranic verses and hadith (sayings of the Prophet Muhammad) that seem to condemn apostasy and prescribe temporal punishment. However, contemporary Islamic scholars have challenged this view, arguing that the Quran and Sunnah do not explicitly mandate the death penalty for apostasy and that a person's choice of faith should be respected.<sup>33</sup> They contend that the punishment for apostasy should be limited to the hereafter and that temporal authorities do not have the right to enforce it.

In a modern, globalised context, the rationale for severe punishments for apostasy, as envisioned in classical Islamic jurisprudence, may no longer be applicable. The early Islamic period's idealised polity is unlikely to exist, necessitating a re-evaluation of such harsh measures against those who renounce their faith.<sup>34</sup> Scholars have argued that the execution of apostates fundamentally contradicts the very essence of faith, as genuine faith cannot be coerced or institutionalised. They contend that such practices should be halted, as they serve no moral or strategic purpose in the contemporary context. The legal status of apostasy and its consequences on marital relationships vary across different Muslim-majority countries. In Malaysia, for instance, the Shariah Courts have exclusive jurisdiction over matters related to apostasy, where apostates may face punishments such as fines, imprisonment, and whipping. However, some scholars argue that Muslims who intend to leave the Islamic faith should only be required to undergo a process of repentance, and any punishment prescribed for apostasy is contrary to the right to freedom of religion.<sup>35</sup> The cancellation of marriage due to apostasy presents a complex and contentious issue at the intersection of Islamic law and human rights. According to classical Islamic jurisprudence, the conversion of one spouse to another religion or the renunciation

<sup>30</sup> Man Baker, "Capital Punishment for Apostasy in Islam," *Arab Law Quarterly* 32, no. 4 (November 9, 2018): 439–61, <https://doi.org/10.1163/15730255-12324033>.

<sup>31</sup> Rusli and Abdul Kadir, "The Challenges Encountered by Mualaf After Conversion to Islam"; Santhira Morgan and Jasni bin Sulong, "Punishment for Apostasy: A Review and Choosing the Right Perspective (Tarjih)," 2020; J. Dudley Woodberry and Seung Hyun (Nathan) Chung, "Contextualization among Muslims: Reusing Common Pillars," *Muslim-Christian Encounter* 10, no. 2 (2017): 55–111, <https://doi.org/10.30532/mce.2017.09.10.2.55>.

<sup>32</sup> Rusli and Abdul Kadir, "The Challenges Encountered by Mualaf After Conversion to Islam."

<sup>33</sup> Morgan and bin Sulong, "Punishment for Apostasy."

<sup>34</sup> Abdullah Bin Hamid Ali, "Preserving The Freedom For Faith: Reevaluating The Politics of Compulsion," *The Review of Faith & International Affairs* 9, no. 2 (June 2011): 3–9, <https://doi.org/10.1080/15570274.2011.571413>.

<sup>35</sup> Mohamed Azam Mohamed Adil, "Law of Apostasy and Freedom of Religion in Malaysia," *Asian Journal of Comparative Law* 2 (2007): 1–36, <https://doi.org/10.1017/S2194607800000065>.



of faith by one spouse may result in the automatic dissolution of the marriage.<sup>36</sup> This doctrinal stance is based on the premise that the marriage contract is inherently tied to the shared faith of the spouses, and the breach of this fundamental condition renders the marriage void.<sup>37</sup> Furthermore, some Islamic scholars argue that the children of an apostate parent may also be legally considered apostates, further complicating the implications for the family unit.

Human rights advocates have challenged this position, arguing that such practices violate the fundamental right to freedom of religion and belief, as enshrined in various international human rights instruments. The right to change one's religion or belief, or to hold no religion at all, is a core principle of human rights law, and any state-sanctioned measures that seek to coerce individuals into maintaining a particular religious affiliation or disrupt their marital relationships based on apostasy may be deemed a violation of these rights.<sup>38</sup> Consequently, there have been ongoing debates and efforts within the international community to reconcile the tensions between Islamic law and the universally recognised human rights principles. Some scholars and activists have argued that the legal injunction to execute apostates should be halted, as it contradicts the underlying nature of genuine faith, which cannot be coerced or institutionalised.

The tension between the classical Islamic legal doctrine of apostasy and international human rights law principles presents a significant challenge. On the one hand, Islamic jurisprudence has historically maintained a firm stance on the gravity of apostasy and its consequences, including the potential dissolution of marriage. On the other hand, the right to freedom of religion and belief, as enshrined in various human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, affirms the individual's right to change or renounce their faith without coercion or discrimination. Scholars have proposed several approaches to reconcile these conflicting frameworks. They suggest that the classical rulings on apostasy should be interpreted in light of the Quranic principle of "no compulsion in religion," emphasising the voluntary nature of faith and the inadmissibility of coercion. They argue that the cancellation of marriage due to apostasy may be seen as an archaic practice that should be reconsidered in the modern context, where the fundamental human rights of individuals must be respected. Furthermore, some legal experts have advocated for the reinterpretation of Islamic law to align with contemporary human rights norms, recognising the evolving nature of legal interpretations and the need to adapt to changing societal realities.

In the Islamic perspective, human rights are defined in proportion to the dignity and respect accorded to individuals. Here, human rights are emphasised through simple objectivity, focusing on the fundamental elements of a good life. Human rights refer to the inherent natural rights that every person is entitled to from birth, in

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<sup>36</sup> Rokhmadi Rokhmadi et al., "Understanding Riddah in Islamic Jurisprudence: Between Textual Interpretation and Human Rights," *HTS Teologiese Studies / Theological Studies* 79, no. 1 (July 4, 2023), <https://doi.org/10.4102/hts.v79i1.8613>.

<sup>37</sup> Sahar Adel and Attaollah Esmaeeli, "Study of Contra-Scripture and Tradition Condition in Marriage," *Journal of Politics and Law* 9, no. 10 (November 30, 2016): 47, <https://doi.org/10.5539/jpl.v9n10p47>.

<sup>38</sup> Brian D. Lepard, *Customary International Law: A New Theory with Practical Applications*, 1st ed. (Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511804717>.



alignment with the human nature described in the Qur'an.<sup>39</sup> The Universal Declaration of Human Rights enumerates various human rights, such as the right to life, liberty, and security; the right to be recognised as a person before the law; the right to freedom of thought, expression, and religion; the right to social security; and the right to education. The concept of human rights is based on the idea of a unified nation founded on philosophical values. According to the Universal Declaration of Human Rights, these rights are inherent to all individuals and include the right to life, personal freedom and security, legal recognition, equality before the law, freedom of thought and expression, freedom of religion, access to social security, education, and more. When human rights are violated, how to address and resolve these issues needs to be considered. The government and society play a crucial role in this process, as humans are inherently social creatures. Therefore, upholding human rights is a shared responsibility across all levels of society to ensure that justice is truly achieved.<sup>40</sup> Indonesia regulates the enforcement of legal justice to uphold human rights. However, the regulations regarding this matter remain broad in scope, failing to fully address the evolving human rights issues.<sup>41</sup> The concept of human rights, which reflects modern legal and political standards, sometimes comes into tension with traditional values, such as sharia in Islam. Nevertheless, this does not imply that human rights completely override religious teachings and traditions; rather, there is an ongoing effort to balance both perspectives within the legal framework. Human rights and religious teachings can be harmonized and complement each other if they are implemented in a balanced manner.

### **The Marriage Annulment Due to Apostasy based on Maqasid al-Shariah Approach**

The topic of marriage annulment due to apostasy, according to the *maqasid al-shariah* (the higher objectives of Islamic law), the preservation of religion (hifz al-din) is one of the fundamental goals of Islamic law.<sup>42</sup> The doctrine of *maqasid al-shariah*, as described by Asy-Syatibi, emphasises the centrality of *maslahah* (public interest) in applying Islamic law. This approach calls for a contextual and holistic understanding of the law rather than a rigid and formalistic interpretation. When a marriage ends because of apostasy, according to *maqasid al-shariah*, keeping the marriage together and making sure everyone is healthy is paramount, not strictly following traditional legal rulings. Within the *maqasid al-shariah* framework, the traditional jurisprudential

<sup>39</sup> Miss Robina, Altaf Ahmad Shah, and Zafar Abbas, "Human Rights in Islamic Sustainable Development," *Current Research Journal of Social Sciences and Humanities* 2, no. 2 (January 25, 2020): 123–31, <https://doi.org/10.12944/CRJSSH.2.2.08>.

<sup>40</sup> Winner Agustinus Siregar and Iin Karita Sakharina, "Human Rights Protection Policy in Freedom Violations of Religion and Belief," *Research on Humanities and Social Sciences*, February 2019, <https://doi.org/10.7176/RHSS/9-4-08>.

<sup>41</sup> Irene Istiningih Hadiprayitno, "Defensive Enforcement: Human Rights in Indonesia," *Human Rights Review* 11, no. 3 (September 2010): 373–99, <https://doi.org/10.1007/s12142-009-0143-1>.

<sup>42</sup> Rusli and Abdul Kadir, "The Challenges Encountered by Mualaf After Conversion to Islam"; Noer Yasin, "The Authority Rationalization Philosophy of the Indonesia Competition Commission: The Due Process of Law and Maqashid Sharia Perspectives," *Jurisdictie: Jurnal Hukum Dan Syariah* 13, no. 1 (July 27, 2022): 63–89, <https://doi.org/10.18860/j.v13i1.15873>; Abbas Arfan et al., "The Implementation of Maqashid Sharia: Heterogeneity of Scholars' Fatwas towards Islamic Banking Contracts," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 14, 2024): 105–28, <https://doi.org/10.22219/ljih.v32i1.32170>.



rulings on marriage annulment due to apostasy should be given priority over preserving the marital relationship and the well-being of the individuals concerned. As one of the fundamental goals of Islamic law, the preservation of religion takes precedence in such cases. *Maslahah* considerations, which occasionally may necessitate a more nuanced and flexible approach, should temper the application of this principle.

The hadiths used by the *fuqaha* as the basis for imposing the death penalty on apostasy (*riddah*) perpetrators are neither well-founded nor entirely relevant. This perspective suggests that punishment for *riddah* does not necessarily have to be the death penalty, as the hadiths in question only serve as one justification among others to legitimise such punishment. The application of this penalty contradicts the Qur'anic principles that uphold freedom of religion. Consequently, it violates human rights by restricting individuals' freedom to practice their beliefs. Historical evidence also reveals that state-issued fatwas for the death penalty, such as those in Egypt, are often the result of political turmoil involving individuals or collective powers.<sup>43</sup> Based on this understanding, it can be concluded that the death penalty for *riddah* perpetrators is justified only under certain conditions: if the perpetrators actively wage war against Muslims concerning their religion, not solely because of apostasy; if they commit other capital offences like murder or robbery; or if they join the religion of an enemy, thus being deemed guilty of high treason (*al-khiyānah al-'uẓmā*) against the state, warranting severe punishment.

Rofiq's study highlights the importance of considering the conditions and circumstances of the individuals involved in determining the custody of children in cases of divorce due to apostasy.<sup>44</sup> The child's best interests should be the judge's guiding principle, even though this may not always coincide with a strict application of the traditional custody rules. In addition, when addressing the issue of apostasy within Islam, it is important to take into account the difficulties convert Muslims (*mualaf*) face in adjusting to their new religious identity. The judge's decision should prioritise the child's best interests, which may supersede the strict application of traditional custody rules. While the preservation of the child's religious identity is important, the paramount consideration should be ensuring the overall well-being and welfare of the child. The preservation of the religious identity of the child is a fundamental aspect of the traditional rules of custody, and deviating from these established principles could undermine the child's spiritual upbringing and the integrity of the Islamic legal system.

In conclusion, the analysis of marriage annulment due to apostasy from the perspective of *maqasid al-shariah* suggests a more nuanced and contextual approach that prioritises the preservation of the marital bond, the welfare of the individuals involved, and the best interests of the child. The *maqasid al-shariah*, which refers to deeper goals of Islamic law, places significant emphasis on the essential goal of preserving religion. A comprehensive and nuanced comprehension of the law is required, emphasising the consideration of the surrounding circumstances and a broad perspective rather than a strict and inflexible interpretation. When a marriage is terminated due to apostasy, the primary emphasis should be on preserving the marriage and safeguarding the well-being of all parties involved rather than rigidly

<sup>43</sup> Rokhmadi et al., "Understanding Riddah in Islamic Jurisprudence."

<sup>44</sup> Rofiq, "Pemberian Hak Asuh Anak Dalam Perceraian Karena Peralihan Agama (Murtad)."



according to conventional legal judgments. The concept of *maqasid* offers a more adaptable approach to Islamic family law, particularly pertinent in contemporary culture. Prioritising the possession of children in situations of divorce resulting from apostasy should be based on the circumstances of the parties involved. The judge's ruling should precede the child's paramount welfare, even if it does not conform to rigid custody regulations. Preserving the child's religious identity is a vital component of conventional custody regulations.

## Conclusion

The issue of marriage annulment due to apostasy (*riddah*) highlights the complex interaction between Islamic legal principles and global human rights frameworks. From the perspective of *Maqasid al-Shariah*, a nuanced approach is required, emphasising the preservation of religion (*hifz al-din*) while prioritising public interest (*maslahah*) and individual well-being over rigid legal interpretations. Classical rulings, such as the automatic dissolution of marriage or punitive measures against apostates, must be reevaluated to align with modern human rights principles, including the right to freedom of religion. Human rights advocates oppose the automatic annulment of marriage due to apostasy, arguing that it restricts an individual's right to choose and practice their faith freely. In Indonesia, inconsistent court rulings on apostasy-related divorces point to the need for clearer guidelines, particularly in cases involving child custody. In Malaysia, the tension between Syariah and constitutional courts underscores the challenges of balancing religious laws with constitutional rights. Custody decisions in these cases must prioritise the welfare of the child, considering their overall well-being alongside the preservation of their religious identity. A comprehensive and contextual interpretation of *Maqasid al-Shariah* can provide a framework for addressing these issues, promoting fairness and inclusivity while upholding the dignity of all individuals involved. A balanced legal framework is needed to harmonise Islamic principles with modern human rights standards, ensuring fairness and dignity for all.

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