

## NEGOTIATING SACRED LAW: QUR'ANIC HERMENEUTICS, LEGAL PLURALISM, AND INTERFAITH MARRIAGE IN MUSLIM-MAJORITY COUNTRIES

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**Abstrak:** Perkawinan beda agama merupakan isu hukum yang secara terus-menerus diperdebatkan dalam masyarakat mayoritas Muslim karena berada pada persimpangan antara otoritas hukum Islam, kerangka konstitusional negara, dan wacana hak asasi manusia global. Kompleksitas perdebatan ini semakin menguat dalam konteks negara-bangsa modern yang mengelola pluralisme agama melalui sistem hukum positif dan mekanisme birokrasi negara. Artikel ini bertujuan untuk menganalisis bagaimana norma-norma perkawinan dalam hukum Islam tidak hanya dirumuskan secara normatif, tetapi juga dinegosiasikan, ditafsirkan ulang, dan dipraktikkan dalam lanskap pluralisme hukum kontemporer. Penelitian ini menggunakan pendekatan kualitatif dengan kerangka interdisipliner yang mengintegrasikan analisis hukum doktrinal, hermeneutika Alquran, dan perbandingan hukum lintas negara. Data primer bersumber dari regulasi dan praktik hukum perkawinan beda agama di Indonesia, Mesir, Malaysia, dan Turki, sementara data sekunder diperoleh dari literatur fikih klasik, tafsir, dan kajian ilmiah kontemporer yang relevan. Temuan penelitian menunjukkan adanya spektrum model regulasi yang beragam, mulai dari larangan absolut, toleransi ambigu, regulasi hibrida, hingga perizinan sekuler, yang dibentuk oleh interaksi kompleks antara doktrin fikih, tata kelola birokrasi negara, dan dinamika sosial masyarakat. Studi ini juga mengungkap peran strategis aparatur birokrasi dalam memproduksi apa yang disebut sebagai fikih pragmatis, serta strategi transnasional pasangan perkawinan beda agama dalam menavigasi keterbatasan hukum domestik. Secara teoretis, artikel ini memperkenalkan konsep ortodoksi yang dinegosiasikan dan fikih pragmatis sebagai kerangka analitis untuk memahami adaptasi dan transformasi hukum Islam dalam konteks modern. Dengan demikian, penelitian ini berkontribusi pada pengayaan diskursus hukum Islam kontemporer dan pluralisme hukum melalui pengembangan paradigma fikih pragmatis sebagai jembatan antara norma suci dan realitas sosial modern.

**Kata Kunci:** Fikih Pragmatis, Pernikahan Beda Agama; Hukum Islam; Pluralisme Hukum; Hermeneutika Alquran

**Abstract:** Interfaith marriage remains a persistently contested legal issue in Muslim-majority societies, situated at the intersection of Islamic legal authority, state constitutional frameworks, and global human rights discourses. The complexity of this debate has intensified within the context of the modern nation-state, which manages religious pluralism through state law and bureaucratic governance. This article examines how marital norms within Islamic law are not only formulated at the normative level but also negotiated, reinterpreted, and enacted within contemporary regimes of legal pluralism. Employing a qualitative approach grounded in an interdisciplinary framework, the study integrates doctrinal legal analysis, Qur'anic hermeneutics, and cross-national comparative law. Primary data are drawn from regulations and legal practices governing interfaith marriage in Indonesia, Egypt, Malaysia, and Turkey, while secondary data consist of classical *fiqh* (Islamic jurisprudence) literature, Qur'anic exegetical works, and relevant contemporary scholarship. The findings reveal a spectrum of regulatory models ranging from absolute

prohibition and ambiguous tolerance to hybrid regulation and secular permission, shaped by the complex interaction of *fiqh* doctrines, state bureaucratic governance, and social dynamics. The study further highlights the strategic role of bureaucratic actors in producing what is termed pragmatic *fiqh*, as well as the transnational strategies employed by interfaith couples to navigate restrictive domestic legal frameworks. Theoretically, the article introduces the concepts of negotiated orthodoxy and *fiqh* pragmatism as analytical tools for understanding the adaptation and transformation of Islamic law in modern contexts. In doing so, the study contributes to contemporary debates on Islamic legal pluralism by advancing *fiqh* pragmatism as an adaptive paradigm that bridges sacred norms and modern social realities.

**Keywords:** *Fiqh* Pragmatism, Interfaith Marriage, Islamic Law, Legal Pluralism, Qur’anic Hermeneutics

## INTRODUCTION

Interfaith marriage has historically occupied a highly contested position within Muslim societies, especially in countries with Muslim-majority populations. This contestation arises from the complex interplay among sacred law, state authority, and evolving social practices.<sup>1</sup> At the normative level, classical *fiqh* (Islamic jurisprudence) established regulations governing interfaith marriage based on Qur’anic injunctions—most notably QS. al-Baqarah [2]: 221 and QS. al-Mā’idah [5]: 5—as well as the consensus (*ijma’*) of classical *fuqahā’* (Islamic jurists). These normative frameworks produced gender-differentiated legal doctrines that permitted Muslim men to marry women from the *Ahl al-Kitāb* (People of the Book), while generally prohibiting Muslim women from marrying non-Muslim men.<sup>2</sup> However, the incorporation of Islamic family law into postcolonial national legal systems—frequently influenced by Western constitutional frameworks and legal principles<sup>3</sup>—has generated new tensions among religious orthodoxy, constitutional guarantees of equality, and global human rights discourses.<sup>4</sup> Such tensions have become increasingly pronounced in pluralistic societies, where demographic

<sup>1</sup> See: 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 2024): 791–820; Mohamad Abdun Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law,” *Mazahib* 21, no. 2 (December 2022): 155–86; Abdul Basid et al., “Interfaith Marriage Controversies in Semarang: An Analysis of Qur’anic Legal Exegesis,” *Malaysian Journal of Syariah and Law* 12, no. 3 (December 2024): 762–77.

<sup>2</sup> See: Usep Saepullah, “The Inter-Religious Marriage in Islamic and Indonesian Law Perspective,” *Jurnal Ilmiah Peuradeun* 7, no. 1 (January 2019): 43–58; Muhammad Sa’i, “Interfaith Marriage in the Perspective of the Qur’an: An Analysis of Social Interpretation of a Pluralistic Society in Indonesia,” *Journal of Islamic Thought and Civilization* 15, no. 1 (April 2025): 385–400; Zubair and Muhammad Faisal Hamdani, “The Qur’an and Muslim Men’s Marriages to Women of the People of the Book (*Ahl Kitab*) (an Interpretive Essay of *Ahl Kitab* on Qur’an 5:5),” *Cogent Arts & Humanities* 12, no. 1 (December 2025): 2472542.

<sup>3</sup> See: Baudouin Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices* (Cambridge University Press, 2021); Muhammad Maulana, “Countering Cultural Stigmatization in a Decolonized System of Inter-Ritual Encounters in Aceh, Indonesia,” *Journal of Religion and Decoloniality* 1, no. 1 (June 2025): 47–61; Fira Mubayyinah, Febri Handayani, and Moh Agus Sifa’, “Legal Pluralism, Epistemic Tensions, and the Reformulation of the Adultery Offense in Indonesia’s New Penal Code,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 2 (December 2025): 573–94.

<sup>4</sup> See: Abdullah Saeed, *Interpreting the Qur’an: Towards a Contemporary Approach* (Taylor & Francis, 2006). Taha Jabir Al-Alwani, “Towards a Fiqh for Minorities: Some Basic Reflections.” Vol. 10, *International Institute of Islamic Thought (IIIT)*, 2003; 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 (December 2023): 381–91; Nor Salam et al., “Interfaith Marriage from the Perspective of Rationality: Theocentrism in Islamic Law and Anthropocentrism in Human Rights Law,” *De Jure: Jurnal Hukum dan Syariah* 16, no. 1 (June 2024): 179–96.

realities and intensified interreligious interactions challenge the sustainability of categorical prohibitions, both socially and normatively.<sup>5</sup>

Over the past three decades, the regulation and public perception of interfaith marriage have experienced significant legal and discursive changes.<sup>6</sup> The expansion of international human rights frameworks, alongside increased global mobility and cross-cultural interactions, has compelled states to reconsider restrictive marital laws.<sup>7</sup> Conversely, conservative interpretations of Islamic law continue to exert considerable influence on public policy and societal attitudes, resulting in a state of legal and social impasse. Empirical data underscore this paradox; for instance, a 2021 report by the Pew Research Center reveals that only about 18 percent of Muslim-majority countries formally recognize the right of Muslim women to marry non-Muslim men.<sup>8</sup> Singapore represents a notable exception, as it legally permits interfaith marriage.<sup>9</sup> This legal rigidity contrasts sharply with the increasingly fluid and pluralistic patterns of social interaction. It is progressively contested by reformist approaches grounded in *maqāṣid al-shari'ah* (objectives of Islamic law), which prioritize justice, equality, and the protection of family welfare as fundamental principles of Islamic legal reasoning.<sup>10</sup>

Despite an expanding corpus of scholarship on interfaith marriage, several significant gaps persist within the existing literature. Firstly, much of the research remains predominantly centered on normative-theological debates or doctrinal analyses of positive law,<sup>11</sup> while the lived experiences of couples navigating restrictive legal and religious frameworks are comparatively underexplored.<sup>12</sup> Secondly, cross-national comparative studies are limited,<sup>13</sup>

<sup>5</sup> See: John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (New York: Cambridge University Press, 2003); Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (April 2020): 131–50; Myengkyo Seo, "Falling in Love and Changing Gods: Inter-Religious Marriage and Religious Conversion in Java, Indonesia," *Indonesia and the Malay World* 41, no. 119 (March 2013): 76–96.

<sup>6</sup> See: 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 (February 2024): 19–43; Abdul Aziz, Lukman Hakim, and Sugeng Aminudin, "Supreme Court's Decision Regarding the Prohibition of Interfaith Marriage and Its Relevance of Maqāṣid Al-Shari'ah," *Jurnal Hukum Islam* 22, no. 1 (October 2024): 247–82.

<sup>7</sup> See: Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Pacific Rim Law & Policy Journal* 21, no. 1 (2011): 13–42; Henri Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century* (Columbia University Press, 2015).

<sup>8</sup> Pew Research Center, *Restrictions on Interfaith Marriage in Muslim-Majority Countries* (Washington, D.C.: Pew Forum, 2021), 15.

<sup>9</sup> Mohd Norhusairi Mat Hussin et al., "Interfaith Marriage Among Muslims in Singapore," *Al-'Adalah* 22, no. 1 (June 2025): 1–28.

<sup>10</sup> See: Ibnudin Ibnudin et al., "Reconstruction Interfaith Marriage Law in Indonesia: Relevance of Sociology Knowledge and Maqāṣid Sharia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. 1 (June 2025): 70–86; Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications, 2008); Fazlur Rahman, *Major Themes of the Qur'an* (University of Chicago Press, 2009).

<sup>11</sup> See: Ahmad Muqorobin, "Interreligious Marriage and Its Validity in Indonesian Marriage Law: Jurisprudence Analysis," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (December 2021): 185–99; Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (December 2017): 263–76; Nurul Miqat et al., "Legal Reform in Interfaith Marriage Under Supreme Court Circular No. 2 of 2023," *Journal of Law and Legal Reform* 6, no. 4 (October 2025): 2059–88.

<sup>12</sup> Danu Aris Setiyanto, Sekar Ayu Aryani, and Sri Wahyuni, "ICRP Jakarta and Interfaith Marriage Assistance in Indonesia: Civil Rights, Legal Interpretation, and Advocacy for Interfaith Couples," *Journal of Islamic Law* 5, no. 2 (July 2024): 170–96.

<sup>13</sup> See: Jana Van Niekerk and Maykel Verkuyten, "Interfaith Marriage Attitudes in Muslim Majority Countries: A Multilevel Approach," *The International Journal for the Psychology of Religion* 28, no. 4 (October 2018): 257–70; Zhorif Agung Imaduddin, Deslaely Putranti, and Muhammad Habibi Miftakhul Marwa, "Interreligious Marriage in

thereby constraining the capacity to capture the diversity of regulatory approaches across Muslim-majority countries, where state policies, religious authorities, and grassroots actors interact in distinct, context-specific configurations. Thirdly, contemporary scholarship has yet to adequately develop socio-legal and anthropological analyses of interfaith marriage practices, particularly regarding how social actors reinterpret and negotiate the boundaries of interfaith marriage law in everyday life.<sup>14</sup> These limitations impede a comprehensive understanding of how sacred law is contested, adapted, and reinterpreted within the lived realities of contemporary Muslim communities. To address these deficiencies, this study aims to integrate textual, legal, and ethnographic perspectives to examine interfaith marriage in contemporary Muslim-majority contexts.

## THEORETICAL FRAMEWORK

### Interdisciplinary Approaches to Interfaith Marriage in Muslim-Majority Societies

This study analyzes the regulation of interfaith marriage through an interdisciplinary theoretical framework that integrates Islamic legal theory, legal pluralism, and the sociology of religion. At the core of this framework is the concept of Islamic constitutionalism, which elucidates how modern nation-states adapt classical *fiqh* doctrines into formal state legal structures.<sup>15</sup> This adaptation results in hybrid legal systems wherein religious norms are institutionalized within positive law and coexist—often in tension—with secular constitutional principles such as equality before the law and the protection of individual rights.<sup>16</sup> This dynamic is particularly pronounced in postcolonial contexts, where Islamic family law has been incorporated into legal frameworks inherited from Western legal traditions, thereby producing state-enforced religious family law regimes.<sup>17</sup> The tension between these competing normative orders is especially pronounced in the realm of personal status, where traditional religious doctrines frequently conflict with constitutional guarantees and international human rights standards.<sup>18</sup>

To elucidate these dynamics, the framework draws on theories of legal pluralism to reveal the complex and overlapping legal regimes governing interfaith marriage.<sup>19</sup> Although civil courts may formally uphold constitutional rights, religious norms continue to influence legal outcomes through institutional authority, administrative procedures, and communal

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Indonesia and Malaysia: Strict and Loose Legal Policy,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (December 2024): 185–204.

<sup>14</sup> See: Shweta Verma and Neelam Sukhramani, “Interfaith Marriages and Negotiated Spaces,” *Society and Culture in South Asia* 4, no. 1 (January 2018): 16–43; Nasir, “Religion, Law, and Identity,” 131–50; Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia,” 155–86.

<sup>15</sup> Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari‘a into Egyptian Constitutional Law*, Brill Book Archive Part 1, (Leiden Boston: BRILL, 2006).

<sup>16</sup> Wael B. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009). Husain, Muhammad Zakir. 2025. “Religious Moderation and the Development of Multicultural Societies in Indonesia: A Normative-Islamic Legal Study”. *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2 (1):27-60. <https://doi.org/10.62976/ajisc.v2i1.1368>.

<sup>17</sup> See: Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford University Press, 2003); Yueksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India* (2013); Brinkley Messick, *Shari‘a Scripts: A Historical Anthropology* (Columbia University Press, 2018).

<sup>18</sup> See: Abdullahi An-Na‘im, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books London, 2002); Cammack and Feener, “The Islamic Legal System in Indonesia,” 13–42.

<sup>19</sup> John Griffiths, “What Is Legal Pluralism?,” *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55.

pressures.<sup>20</sup> This situation engenders processes of vernacularization, wherein global human rights discourses are translated, localized, and reframed within religious language and logic.<sup>21</sup> Building upon this analysis, the study introduces the concept of *fiqh* pragmatism to characterize the adaptive strategies employed by Muslim couples navigating restrictive legal frameworks. Such strategies include nominal conversion, utilization of cross-border marriage registration, and other legal maneuvers that enable couples to reconcile religious obligations with personal and social aspirations.<sup>22</sup> This concept aligns with Abdullahi An-Na'im's notion of "negotiated reform" in *Shari'ah* (Islamic law), which underscores adaptive and socially responsive approaches to legal reasoning.<sup>23</sup>

The theoretical framework revisits classical *fiqh* and *tafsir* discourses on interfaith marriage by situating them within their socio-historical contexts of development. Jurists such as al-Shāfi'ī formulated prohibitions against Muslim women marrying non-Muslim men by invoking the principle of *al-qiwamah* (male authority), as articulated in QS. al-Nisā' [4]: 34, which designates the Muslim husband as responsible for the religious guidance of the family and children.<sup>24</sup> However, other scholars, including al-Māwardī, observed that this principle was not absolute, citing exceptional cases in which marriages involving Muslim women were subsequently legitimized following the husband's conversion to Islam.<sup>25</sup> Similarly, classical exegetes such as al-Wāhidī and al-Suyūṭī linked Qur'anic rulings on interfaith marriage (QS. al-Baqarah [2]: 221 and QS. al-Mā'idah [5]: 5) to specific socio-political circumstances, including 'Uthbān ibn Mālik's proposed marriage to a polytheist woman and the expansion of political relations with the *Ahl al-Kitāb* following the Treaty of Ḥudaybiyyah.<sup>26</sup> Ibn Taymiyyah's emphasis on the historical embeddedness of these rulings further highlights the potential for renewed interpretation responsive to evolving social conditions.<sup>27</sup> Such historically grounded interpretations provide a hermeneutical foundation for reexamining interfaith marriage norms in contemporary contexts.

At the level of lived experience, this framework synthesizes theories of piety as embodied agency with the sociological concept of habitus to elucidate how individuals navigate structural constraints imposed by legal systems and religious norms.<sup>28</sup> Ethnographic evidence from Indonesia and Malaysia demonstrates that couples often engage in legal bricolage, creatively combining elements from multiple legal systems to attain marital legitimacy while maintaining religious identity.<sup>29</sup> This approach challenges prevailing narratives that depict Muslim women

<sup>20</sup> See: John R Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge University Press, 2003); Michael G Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton University Press, 2002).

<sup>21</sup> See: Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, Chicago Series in Law and Society (Chicago, IL: University of Chicago Press, 2005).

<sup>22</sup> See: Al-Alwani, "Towards a Fiqh for Minorities"; Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (New Jersey: New Jersey: Princeton University Press, 2005).

<sup>23</sup> An-Na'im, *Islamic Family Law in a Changing World*.

<sup>24</sup> Muḥammad ibn Idrīs al-Shāfi'ī, *Al-Umm* (Beirut: Dār al-Ma'rifah, 2004).

<sup>25</sup> 'Alī ibn Muḥammad al-Māwardī, *Al-Hāwī al-Kabir* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999).

<sup>26</sup> Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī, *Lubāb al-Nuqūl fī Asbāb al-Nuḥūl* (Beirut: Dār Ibn Kathīr, 2002).

<sup>27</sup> Taqī al-Dīn Aḥmad ibn Taymiyyah, *Majmū' al-Fatāwā* (Riyadh: Dār 'Ālam al-Kutub, 2005), 194.

<sup>28</sup> See: Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject*; Pierre Bourdieu and Richard Nice, *Outline of a Theory of Practice: Structures and the Habitus* (Routledge, 1977), 193–212; Michel de Certeau, "The Practice of Everyday Life, Trans. S. Rendall, Berkeley, California: University of California Press, 1984.

<sup>29</sup> See: Annelise Riles, *The Network Inside Out* (Ann Arbor: University of Michigan Press, 2000); Joan Vincent and Susan F Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (1998).

solely as passive subjects of patriarchal law, instead highlighting their active agency in shaping legal and social outcomes.<sup>30</sup> Normatively, the framework incorporates the principle of *maqāṣid al-sharī‘ah*,<sup>31</sup> as reinterpreted in contemporary scholarship,<sup>32</sup> to reconsider traditional restrictions in the context of modern human rights discourse.<sup>33</sup> By emphasizing overarching objectives such as justice, public welfare, and family protection, the framework rejects simplistic dichotomies that oppose “Islam” to “human rights,” affirming the dynamic interplay among textual interpretation, power relations, and lived experience in the ongoing negotiation of Muslim marriage norms. By integrating *maqāṣid al-sharī‘ah* with lived piety, this framework bridges the epistemic divide between legal theory and social practice,<sup>34</sup> conceptualizing interfaith marriage not as a fixed prohibition but as a fluid, negotiated phenomenon.

## METHODS

To accomplish the objectives of this study, a qualitative research approach is employed, grounded in an interdisciplinary framework that integrates doctrinal legal analysis with Qur’anic hermeneutics. This approach transcends the simplistic dichotomy between normative texts and social context. Primary data are sourced from legal regulations and policy frameworks governing interfaith marriage in Egypt, Indonesia, Turkey, and Malaysia—four jurisdictions that exemplify distinct trajectories in the reform of Islamic family law, the interplay between state authority and religious institutions, and patterns of social resistance and adaptation. Secondary data comprises classical *fiqh* texts, Qur’anic exegetical works (*tafsīr*), and pertinent contemporary scholarly literature. All data are subjected to comparative legal analysis to identify patterns, variations, and normative implications in the regulation of interfaith marriage across these contexts.<sup>35</sup> Collectively, these methodological procedures facilitate a comprehensive examination of how marital norms within traditional Islamic law are dynamic, continuously negotiated, articulated, and reproduced within pluralistic and contested social environments. This study thereby contributes to broader discourses in contemporary Islamic legal scholarship, constitutionalism, religious pluralism, and human rights, as well as to policy-relevant debates in Muslim-majority societies.

## RESULTS AND DISCUSSION

### Regulation of Interfaith Marriages in Egypt, Indonesia, Turkey, and Malaysia

The comparative findings of this study reveal that the regulation of interfaith marriage in Muslim-majority countries encompasses a broad policy spectrum, ranging from outright prohibition to conditional tolerance and partial recognition.<sup>36</sup> These regulatory differences

<sup>30</sup> Ziba Mir-Hosseini, “The Construction of Gender in Islamic Legal Thought and Strategies for Reform,” *Hanwa* 1, no. 1 (2003): 1–28.

<sup>31</sup> Al-Shāṭibī, *Al-Muwāfaqāt fi Uṣūl al-Sharī‘ah*, vol. 1 (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 2003).

<sup>32</sup> See: Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Inst. of Islamic Thought, 2008); Muhammad Lutfi Hakim, “Pergeseran Paradigma Maqasid al-Syari’ah: Dari Klasik sampai Kontemporer,” *Al-Manahij: Jurnal Kajian Hukum Islam* 10, no. 1 (February 2017): 1–16.

<sup>33</sup> See: Saeed, *Interpreting the Qur’an*; Rahman, *Major Themes of the Qur’an*.

<sup>34</sup> Achmad Roziqi et al., “Institutional Ijtihād and Socio-Legal Adaptation: The Formulation of Waṣīyah Wājibah in Indonesia’s Compilation of Islamic Law,” *Asy-Syir’ab: Jurnal Ilmu Syari’ah dan Hukum* 59, no. 1 (June 2025): 1–18.

<sup>35</sup> Hiba Al Abiad and Ayman Masadeh, “Law Comparison as a Research Method in Legal Studies, and Its Importance in Promoting Uniformity in Legal Systems,” in *BUID Doctoral Research Conference 2023*, ed. Khalid Al Marri et al., Lecture Notes in Civil Engineering (Cham: Springer Nature Switzerland, 2024), 473:446–54.

<sup>36</sup> Werner F. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge University Press, 2006).

cannot be attributed solely to variations in theological doctrine. Instead, they result from a complex interplay among the legacy of classical *fiqh*, postcolonial legal frameworks, and the lived experiences of couples navigating marital legitimacy. Consequently, interfaith marriage should be understood as a site of normative contestation, where religious authority, state constitutional commitments, and social realities intersect—often in contradictory ways—producing uneven legal outcomes. Thus, interfaith marriage serves as a lens through which the intricate negotiation between religious doctrine and constitutional pluralism becomes visible.

Egypt represents a model characterized by an absolute prohibition on interfaith marriage for Muslim women. Under the current legal framework, Muslim women are unequivocally prohibited from marrying non-Muslim men, and the judiciary routinely annuls such marriages.<sup>37</sup> This strict approach is grounded in classical *fiqh* interpretations, particularly those advanced by jurists such as Ibn Qayyim, who viewed interfaith marriages involving Muslim women as a threat to the cohesion of the Muslim community and the preservation of religious identity within the family.<sup>38</sup> This normative position is further reinforced by state legislation, including Law No. 462 of 1955,<sup>39</sup> as well as authoritative religious edicts, most notably the 2017 fatwa issued by the al-Azhar Fatwa Committee.<sup>40</sup> Collectively, these legal and religious instruments underscore Egypt's sustained emphasis on Sunnī orthodoxy, often at the expense of emerging global norms related to gender equality.<sup>41</sup>

In contrast, Indonesia exemplifies a model of ambiguous tolerance characterized not by explicit prohibition but by systemic bureaucratic impediments. Although Indonesian marriage law does not explicitly prohibit interfaith marriage, couples seeking to enter such unions frequently encounter administrative resistance, particularly from the Office of Religious Affairs (*Kantor Urusan Agama*, KUA).<sup>42</sup> These obstacles include requirements for court rulings and the practice of registering interfaith marriages as non-Islamic unions in civil registries.<sup>43</sup> The issuance of Supreme Court Circular Letter No. 2 of 2023, which aims to harmonize legal practice by mandating conformity with each party's religious law, has exacerbated existing legal ambiguities.<sup>44</sup> Judicial decisions—such as North Jakarta District Court Decision No. 423/Pdt.P/2023/PN Jkt.Utr<sup>45</sup>—demonstrate inconsistencies in the application of this directive, highlighting the limitations of Supreme Court Circular Letter No. 2 of 2023 as a

<sup>37</sup> See: George N Sfeir, "Basic Freedoms in a Fractured Legal Culture: Egypt and the Case of Nasr Hamid Abu Zayd," *Middle East Journal* 52, no. 3 (1998): 402–14; Lynn Welchman, *Women's Rights and Islamic Family Law: Perspectives on Reform* (Zed Press, 2004).

<sup>38</sup> Ayse Elmali-Karakaya, "Interfaith Marriage in Islam: Classical Islamic Resources and Contemporary Debates on Muslim Women's Interfaith Marriages," *Religions* 13, no. 8 (2022): 726.

<sup>39</sup> Arab Republic of Egypt, "Law No. 462 of 1955 on the Organization of the Sharia Courts," Art. 6.

<sup>40</sup> Al-Azhar Fatwa Committee, "Fatwa on Interfaith Marriage," Cairo, 2017. See: Asif Mohiuddin, "Islam, Religious Authority and The State: The Case of Egypt," *Asian Journal of Middle Eastern and Islamic Studies* 16, no. 2 (2022): 165–88; 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.

<sup>41</sup> Lombardi, *State Law as Islamic Law in Modern Egypt*.

<sup>42</sup> Bayu Dwiwiddy Jatmiko, Nur Putri Hidayah, and Samira Echaib, "Legal Status of Interfaith Marriage in Indonesia and Its Implications for Registration," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 167–77.

<sup>43</sup> Rajafi, Sugitanata, and Lusiana, "The 'Double-Faced' Legal Expression," 19–43.

<sup>44</sup> Supreme Court of Indonesia, "Surat Edaran Mahkamah Agung No. 2 Tahun 2023 Tentang Petunjuk Pelaksanaan Pencatatan Perkawinan Beda Agama."

<sup>45</sup> Pengadilan Negeri Jakarta Utara, "Putusan No. 423/Pdt.P/2023/PN Jkt.Utr."

mechanism for legal harmonization.<sup>46</sup> Consequently, interfaith marriage in Indonesia occupies a liminal legal space: socially practiced yet lacking sufficient legal certainty, thereby rendering couples vulnerable to institutional contestation and social pressures.<sup>47</sup> The Indonesian case thus illustrates how bureaucratic discretion engenders de facto legal pluralism within an ostensibly unified legal system.

The Turkish experience exemplifies what can be characterized as a secular permission model, at least in terms of formal legal provisions.<sup>48</sup> Turkish civil law formally acknowledges the legality of interfaith marriage within a secular legal framework that delineates a clear separation between religion and state administration.<sup>49</sup> However, empirical evidence reveals a substantial disparity between these legal guarantees and the actual experiences of interfaith couples. Field research demonstrates that many such couples in Turkey face opposition from family members and local communities, which operates as a form of “soft prohibition.”<sup>50</sup> This divergence between legal permissibility and social constraint highlights the enduring influence of cultural and religious norms, even within a political system historically committed to secularization and the marginalization of religion in public governance. Consequently, the Turkish case illustrates that formal legal recognition does not inherently dismantle informal social regulatory mechanisms that limit the exercise of individual legal rights. Turkey thus represents a context in which secular legality coexists with strong informal religious norms, underscoring the persistence of moral regulation beyond codified law.<sup>51</sup>

Malaysia presents a hybrid regulatory model influenced by its federal structure and dual legal system. Within this framework, civil courts hold general jurisdiction over marriage matters, whereas Islamic courts maintain exclusive authority over Muslims, leading to jurisdictional conflicts and inconsistent legal outcomes across different states.<sup>52</sup> For example, interfaith marriage may be permitted under specific conditions in Selangor but is categorically prohibited in Kelantan.<sup>53</sup> The coexistence of civil and Islamic jurisdictions results in regulatory fragmentation, making the recognition of interfaith marriages dependent on geographic location and judicial interpretation.<sup>54</sup> This fragmentation exemplifies a broader structural tension within Malaysia’s legal system: the ongoing challenge of reconciling constitutional

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<sup>46</sup> Evelyn Fenecia, Shenti Agustini, and Winda Fitri, “Kepastian Hukum Sema Nomor 2 Tahun 2023 Terhadap Pencatatan Perkawinan Antar-Agama dalam Bingkai Kebhinnekaan Indonesia,” *Public Knowledge Project* PLN 4, no. 2 (2024): 128.

<sup>47</sup> Setiyanto, Aryani, and Wahyuni, “ICRP Jakarta and Interfaith Marriage Assistance in Indonesia,” 170–96.

<sup>48</sup> Sinem Adar, “Religious Difference, Nationhood and Citizenship in Turkey: Public Reactions to an Interreligious Marriage in 1962,” *The History of the Family* 24, no. 3 (July 2019): 520–38.

<sup>49</sup> See: Ozan O Varol, “Is Secularism Possible in a Majority-Muslim Country? The Turkish Example (with A. Wing),” *Texas International Law Journal* 42 (2006); Yahya Bilginer and Nuri Kahveci, *Medeni Hukukla Mukayeseli Olarak İslam Hukukunda Evlenmenin Geçici Engelleri*, no. 17 (2021): 125–39.

<sup>50</sup> See: D T Kuliev, *Interfaith Marriage: Comparative Analysis of the Prescriptions of Islam and Current Legislation of Muslim States*, no. 8 (2022): 42; Aldi Saputra, “Interfaith Marriages: Navigating Psychological and Legal Complexities in Light of Religious Norms and National Laws,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 1 (December 2023): 59–69.

<sup>51</sup> Ahmet Temel, “Between State Law and Religious Law: Islamic Family Law in Turkey,” *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 8, no. 1 (2020): 68–76.

<sup>52</sup> “Federal Constitution of Malaysia,” Art. 121(1A).

<sup>53</sup> See: Dörthe Engelcke, “Constituting Religion: Islam, Liberal Rights, and the Malaysian State,” *The Journal of Law and Religion* 36, no. 1 (2021): 167–70; Kuliev, *Interfaith Marriage*.

<sup>54</sup> M Adli Abdullah, “Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes,” *Law and Economy* 3, no. 4 (2024): 29–38.



guarantees of religious freedom with the entrenched authority of Islamic family law.<sup>55</sup> Consequently, Malaysia's fragmented model illustrates the difficulties Muslim-majority democracies face in balancing constitutional rights with religious authority.<sup>56</sup>

### Theological Evolution and Contemporary Reinterpretations

The regulatory variations governing interfaith marriage across different jurisdictions must be examined in the context of the dynamics and development of Islamic theological discourse on interreligious marital relations. Within the classical *fiqh* tradition, the rules of interfaith marriage were established with reference to the Qur'anic classifications of *mushrikāt* (polytheist women) and *Ahl al-Kitāb* (Jews and Christians). The majority of early jurists, including al-Shāfi'ī and al-Ṭabarī, permitted Muslim men to marry women from among the *Ahl al-Kitāb*, while generally prohibiting Muslim women from marrying non-Muslim men.<sup>57</sup> This normative asymmetry was justified by the principle of *al-qiwāmah*, as articulated in QS. al-Nisā' [4]: 34, which assumes that a Muslim husband holds both the authority and responsibility to safeguard the religious identity of the family and to ensure the religious upbringing of children.<sup>58</sup> In contrast, some scholars, such as Ibn 'Umar, adopted a more restrictive stance by rejecting all forms of interfaith marriage—including unions with the *Ahl al-Kitāb*—in order to preserve the moral and religious integrity of the Muslim community.<sup>59</sup>

Classical *fiqh* discourse was not monolithic. Instead, it encompassed a range of minority positions that demonstrate normative flexibility often neglected in contemporary interpretations. For example, Ibrāhīm al-Nakha'ī, as cited by al-Jaṣṣāṣ, permitted interfaith marriage under certain conditions, including the allowance of temporary marriage (*mut'ah*) in cases of necessity.<sup>60</sup> Ibn Ḥazm, adopting a literalist interpretation of QS. al-Mā'idah [5]: 5, contended that the Qur'anic prohibitions were explicitly directed at polytheists and did not extend to the *Ahl al-Kitāb*. Concurrently, classical exegetical traditions situated these verses within their specific historical contexts.<sup>61</sup> Al-Wāḥidī associated QS. al-Baqarah [2]: 221 with the case of 'Uthbān ibn Mālik's proposed marriage to a polytheist woman, while al-Suyūṭī interpreted QS. al-Mā'idah [5]: 5 in light of the expanded political and social interactions between Muslims and Jewish and Christian communities following the Treaty of Ḥudaybiyyah. Furthermore, Ibn Taymiyyah's emphasis on the socio-political nature of these rulings highlights that Islamic norms governing interfaith marriage emerged from particular historical circumstances and should not be abstracted from the social conditions in which they were formulated.<sup>62</sup>

<sup>55</sup> Mohamed Azam Mohamed Adil, Wan Naim Wan Mansor, and Azril Amin, "The Right to Freedom of Religion and Jurisdictional Conflicts in Malaysia," *Sinergi* 3, no. 1 (2023): 69–86.

<sup>56</sup> Ahmad Ibrahim, *The Administration of Islamic Law in Malaysia* (Kuala Lumpur: Malayan Law Journal, 2000).

<sup>57</sup> See: Abū Ja'far Muḥammad ibn Jarīr al-Thabarī, *Jāmi' al-Bayān 'an Ta'wīl āy al-Qur'ān (Tafsīr al-Ṭabarī)* (Beirut: Beirut: Dār al-Kutub al-'Ilmiyyah, 1992), 377–78; Abū Bakr Muḥammad ibn 'Abd Allāh al-Ma'āfirī Ibn al-'Arabī, *Aḥkām al-Qur'ān* (Beirut: Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 217.

<sup>58</sup> Uriel Simonsohn, "Visiones Islámicas Tempranas y Medievales Acerca de La Autoridad Materna En Circunstancias de Diferencia Religiosa," *Al-Qantara* 44, no. 2 (2023).

<sup>59</sup> Yūsuf al-Qaraḍāwī, *Fiqh Al-Awlawiyyāt: Dirāsah Jadidah fi Ḍaw' al-Qur'ān wa al-Sunnah* (Cairo: Maktabat Wahbah, 1995).

<sup>60</sup> Abū Bakr Aḥmad ibn 'Alī al-Rāzī al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, Vol. 2 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2001).

<sup>61</sup> 'Alī ibn Aḥmad ibn Ḥazm, *Al-Muḥalla*, Jilid 7 (Beirut: Dār al-Āfāq al-Jadidah, 2005).

<sup>62</sup> Safroodin Safroodin et al., "Exploring Interfaith Marriage in Qur'ān: A Hermeneutic and Anthropological Analysis of Permissibility," *Journal of Islamic Thought and Civilization* 14, no. 2 (2024): 370–85.

The diversity of classical juristic opinions constitutes a substantial intellectual resource from which contemporary reformist scholars have derived alternative hermeneutical approaches. In modern contexts, these classical positions have been reinterpreted through the framework of *maqāṣid al-shari‘ah*.<sup>63</sup> Reformist thinkers, such as Yūsuf al-Qaraḍāwī, contend that categorical prohibitions warrant reassessment in light of the higher objectives of Islamic law, including justice (*‘adl*), compassion (*raḥmah*), and social harmony (*ṣulḥ*).<sup>64</sup> This methodology does not merely represent a departure from classical orthodoxy; rather, it embodies a hermeneutical strategy that contextualizes Qur’anic injunctions within evolving socio-political realities.<sup>65</sup> Accordingly, *maqāṣid al-shari‘ah* serves as a normative intermediary between Islamic family law and contemporary human rights principles,<sup>66</sup> facilitating more flexible interpretations without compromising the integrity of the Islamic legal tradition. This *maqāṣid*-based reasoning marks a paradigm shift from prohibitive literalism toward a purposive hermeneutics aimed at reconciling Islamic law with the ethical framework of human rights.

### Negotiating Interfaith Marriage: Bureaucratic Processes, Cultural Hybridity, and the Globalization of Islamic Law

The findings of this study indicate that the regulation of interfaith marriage in Muslim-majority countries represents a complex, multi-dimensional phenomenon that transcends a simplistic binary opposition between religious orthodoxy and secular state law. Instead, this regulation arises from a dynamic interaction among state legal structures, religious authorities, and transnational human rights discourses<sup>67</sup>—a process conceptualized herein as a triple helix.<sup>68</sup> Within this framework, Islamic law does not function as a fixed and immutable set of divine norms, nor does secularization entirely subsume it. Instead, it is continuously reconstituted through dialectical engagements among state institutions, religious communities, and global normative regimes, resulting in hybrid legal forms that defy straightforward classification as either “religious” or “secular.”<sup>69</sup> This conceptualization challenges the dichotomy of “Islam versus secularism” and emphasizes the reciprocal co-constitution of religious and state legalities.

<sup>63</sup> See: Nurul Ain Norman and Mohammad Eisa Ruhullah, “Exploring the Ethical Dimensions of Fiqh: The Role of the Soul in Achieving Maqasid al-Shari‘ah,” *Deleted Journal* 29, no. 1 (2024): 47–77; Khairul Fikri and Khamim, “The Concept of Good Governance in the Story of Prophet Solomon: A Maqāṣidi Interpretation Analysis of Q.S. An-Naml [27]: 17-44,” *Basmala: Journal of Qur’an and Hadith* 1, no. 1 (June 2025): 1–27.

<sup>64</sup> Al-Qaraḍāwī, *Fiqh al-Awlawiyyat*.

<sup>65</sup> See: Muhammad Saleh et al., “Interfaith Marriage in the Perspective of Islamic Jurisprudence and Compilation of Islamic Law,” *Journal of Family Law and Islamic Court* 1, no. 2 (2023); Elmali-Karakaya, “Interfaith Marriage in Islam.”

<sup>66</sup> See: M Cherif Bassiouni, *Human Rights Between Universality and Islamic Legitimacy*, Oxford University Press, 2024; Uthman Mehdad Al-Turabi and Jasser Auda, “Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World,” *Indonesian Journal of Islamic Law* 8, no. 2 (December 2025): 209–28.

<sup>67</sup> See: Manochehr Dorraj, *Islam and Human Rights: Ideals and Practices* (Palgrave Macmillan, New York, 2011), 41–56; R Ruard Ganzevoort and Johan Roeland, “Lived Religion: The Praxis of Practical Theology,” *International Journal of Practical Theology* 18, no. 1 (2014): 91–101; Zaimuariffudin Shukri Nordin et al., “Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu,” *Journal of Islamic Law* 6, no. 1 (February 2025): 89–111.

<sup>68</sup> Henry Etzkowitz and Loet Leydesdorff, “The Dynamics of Innovation: From National Systems and ‘Mode 2’ to a Triple Helix of University–Industry–Government Relations,” *Research Policy* 29, no. 2 (February 2000): 109–23.

<sup>69</sup> See: Vincent and Hirsch, *Pronouncing and Persevering*; Merry, “Legal Pluralism.”

A key finding of this study pertains to the bureaucratization of religious authority in the regulation of interfaith marriage. State actors—particularly marriage registrars and local religious officials—have become principal interpreters of Islamic law in everyday contexts, frequently exercising discretionary power that exceeds the boundaries established by formal legal statutes. In Indonesia, for instance, various KUA enforce additional administrative requirements<sup>70</sup>—such as affidavits, mandatory counseling, and multi-tiered approval processes—that lack explicit authorization in national legislation.<sup>71</sup> These practices exemplify Max Weber's concept of the routinization of charisma,<sup>72</sup> wherein authority derived from sacred texts and religious symbols is transformed into institutionalized bureaucratic procedures.<sup>73</sup> Consequently, a form of street-level *fiqh* emerges, whereby religious norms are constructed and enforced through the routine administrative discretion of frontline officials.<sup>74</sup> This finding highlights a significant paradox: religious authority is not confined solely to official fatwas—such as the 1980 ruling by the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, MUI) prohibiting all forms of interfaith marriage—but is also produced in practice by local bureaucratic actors who create parallel systems of legality within everyday governance.<sup>75</sup>

Beyond institutional dynamics, ethnographic data reveal that interfaith couples actively engage in bottom-up theological innovations that contest the monopolies held by both the state and formal clerical authorities.<sup>76</sup> Numerous lay Muslims reinterpret Qur'anic verses by emphasizing their historical contexts, viewing prohibitions on interfaith marriage as responses to the existential vulnerabilities faced by early Muslim communities. Others appeal to *maqāṣid al-sharī'ah* to contend that interfaith unions may, in fact, embody Islam's higher objectives, including justice, compassion, and social harmony.<sup>77</sup> These grassroots hermeneutics illustrate that couples do not merely resist legal restrictions. Instead, they actively construct alternative religious narratives that confer moral and theological legitimacy upon their life choices.<sup>78</sup> Furthermore, survey data indicate that a significant proportion of couples perceive their

<sup>70</sup> Tomi Hidayatullah and Oemar Moechthar, "Inter-Religious Marriage: A Comparison Analysis of Indonesian Law with Other Countries," *Notaire* 6, no. 2 (2023): 291–306.

<sup>71</sup> Putri Umairah et al., "Brokered Marriage Administration: Rational Strategies of Muslim Communities in Navigating the Bureaucratization of Marriage in Indonesia," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (2025): 193–212.

<sup>72</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Bedminster Press, 1968). See also, Waheeda, Waheeda, Ali Mutakin, Isroiliyah Isroiliyah, Rahmad Lubis, and Iqbal Saujan. 2025. "The Dynamic Interplay: A Normative-Philosophical Study of Islam and Local Wisdom in Indonesia". *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2 (1):61-91. <https://doi.org/10.62976/ajisc.v2i1.1369>.

<sup>73</sup> Jay A Conger, "Max Weber's Conceptualization of Charismatic Authority: Its Influence on Organizational Research," *The Leadership Quarterly* 4, nos. 3–4 (1993): 277–88.

<sup>74</sup> See: Abdul Rashid Moten, "Striving for Islamic Governance: Varying Contexts, Different Strategies," *The American Journal of Islamic Social Sciences* 32, no. 2 (2015): 68–89; Bani Syarif Maula, "The State Legal Policies on Sharia Application in Changing Pattern of Indonesia's Islamic Movements," *Al-Hurriyah: Jurnal Hukum Islam* 7, no. 1 (2022): 15; Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service* (New York: Russell Sage Foundation, 1983).

<sup>75</sup> Muhammad Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia, (Sebuah Studi Tentang Pemikiran Hukum Islam Indonesia)* (Jakarta: INIS, 1993).

<sup>76</sup> "Author's Field Data, Jakarta and Kuala Lumpur," 2023. Riandi, M. ., & Rusdiyah, R. (2025). The Interaction between Islam and Local Wisdom in Indonesia: A Normative-Philosophical Study. *ASEAN Journal of Islamic Studies and Civilization (AJISC)*, 2(1), 93–115. <https://doi.org/10.62976/ajisc.v2i1.1370>

<sup>77</sup> Ismail Firano, "Maqāṣid al-Zuḥāj al-Syar'iyyah: Dirāsah li Ahammi Maqāṣid al-Aṣliyyah wa al-Taba'iyyah," *Jurnal Al-Dustur* 7, no. 2 (2024): 170–97.

<sup>78</sup> Magnus Marsden, ed., *Islam and Society in Pakistan: Anthropological Perspectives* (Karachi: Oxford University Press, 2010).

marriages as expressions of “authentic Islamic values of tolerance,” a finding that challenges dominant portrayals of Muslim women as passive subjects of patriarchal law and instead reaffirms their agency in shaping family law practices.<sup>79</sup>

A further dimension of this evolving landscape is shaped by globalization, which facilitates cross-border legal strategies.<sup>80</sup> Numerous couples circumvent restrictive domestic frameworks by, for example, Malaysian couples marrying in Thailand or Indonesian couples registering their marriages in Singapore.<sup>81</sup> These strategies give rise to what can be termed legal cosmopolitanism, wherein individuals engage with multiple legal jurisdictions simultaneously to secure marital recognition while preserving their religious identity.<sup>82</sup> Rather than indicating a rejection of Islamic law, such transnational practices reflect efforts to reclaim interpretive autonomy from state monopolies over religious normativity.<sup>83</sup> The proliferation of these practices signifies the fragmentation of religious authority in the modern era and reveals an expanding divergence between localized legal restrictions and global human rights discourses.<sup>84</sup> Collectively, these dynamics demonstrate the emergence of a global Islamic legal consciousness that operates beyond the nation-state, thereby reshaping prevailing conceptions of legitimacy, authority, and legal belonging.

### Between Scriptural Authority and Contemporary Reinterpretation

The issue of interfaith marriage occupies a highly contested position within Islamic jurisprudence, situated at the intersection of Qur’anic textual authority, juristic theological interpretation, and evolving socio-historical contexts. The Qur’an delineates a nuanced normative distinction between marriage with the *Ahl al-Kitāb* and marriage with *mushrikāt*. The permissibility of Muslim men marrying women from the *Ahl al-Kitāb* is traditionally grounded in QS. al-Mā’idah [5]: 5, which permits chaste women from the People of the Book to be lawful spouses. This verse has been conventionally interpreted as an explicit dispensation; however, its practical application has often been limited by concerns regarding religious authority within the household and the religious upbringing of children.<sup>85</sup> In contrast, QS. al-Baqarah [2]: 221 categorically prohibits marriage with polytheists, citing the potential threat such unions pose to the integrity of faith. These two scriptural foundations have given rise to a rich tradition of *tafsīr* and *fiqh*, characterized by considerable debate concerning the scope and implementation of these rulings.<sup>86</sup>

Classical *fuqahā’* did not reach a consensus regarding the delineation of permissibility boundaries. For instance, Ibn ‘Umar expanded the prohibition by categorizing the *Ahl al-Kitāb* as a form of *mushrikūn*, grounded in theological doctrines he interpreted as constituting

<sup>79</sup> See: Bryan S Turner, *Feminism, Fertility and Piety* (Edinburgh University Press, 2023), 132–50; Julie McBrien and Annelies Moors, *Muslim Marriage and Non-Marriage* (Leuven University Press, 2023).

<sup>80</sup> Mirjam Künkler and Yüksel Sezgin, “Cross-Border Marriages and Islamic Law: Negotiating Legality across States,” *Global Networks* 23, no. 1 (2023): 88–107.

<sup>81</sup> See: Rushdy Thaokloy, Miszaairi Sitoris, and Ahmad Muhammad Husni, “Transfer of Guardian’s Authority of Marriage to the Hand of the Judge: A Jurisprudential Field Study in the Marriage of Some Malaysians in Southern Thailand,” *المجلة العالمية للدراسات الفقهية والأصولية* 7, no. 2 (2023): 20–33; Sri Wahyuni et al., “The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen,” *BESTUUR* 10, no. 1 (August 2012): 12.

<sup>82</sup> See: John F Sullivan, *Contemplating Convivencia: Cosmopolitanism, Exclusivism and Religious Identity in Iberia*, 2012; Rifqi Khairul Anam, “A Brief Comparison of Religious Legal Systems,” *Fakta: Forum Aktual Ahwal Al-Syakhsyah* 2, no. 2 (August 2024): 142–49.

<sup>83</sup> Mahmood, *Politics of Piety*.

<sup>84</sup> Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, Butterworths London, 2002.

<sup>85</sup> Sayyid Sābiq, *Fiqh al-Sunnah* (Kairo: Dār al-Fath li al-‘I‘lām al-‘Arabī, 1994), 94.

<sup>86</sup> Muḥammad Rashīd Riḍā, *Tafsīr al-Manār* (Kairo: Dār al-Manār, 1948), 356–57.

associationism (*shirk*).<sup>87</sup> Conversely, al-Ṭabarī acknowledged the existence of divergent opinions among the Companions of the Prophet concerning whether the prohibition stated in QS. al-Baqarah [2]: 221 applied to the *Ahl al-Kitāb* or was confined to Arab polytheists.<sup>88</sup> Al-Qurṭubī further contextualized the prohibition by situating it within the early Muslim community's vulnerability to pagan influence, thereby interpreting the restriction as a situational and protective measure.<sup>89</sup> A more cautious stance was presented by al-Rāzī, who affirmed the theological legitimacy of marriage with the *Ahl al-Kitāb* based on their possession of revealed scripture, while simultaneously cautioning against the practical risks arising from doctrinal differences within family life.<sup>90</sup> Ibn al-ʿArabī proposed an even more restrictive interpretation, limiting permissibility to Jewish and Christian women whose religious traditions were considered free from theological distortion.<sup>91</sup>

Disagreement has also arisen concerning the definition of who qualifies as *Ahl al-Kitāb*. Al-Shāfiʿī espoused a restrictive interpretation, limiting the category to Jews and Christians of Israelite descent.<sup>92</sup> In contrast, modern reformist thinkers, such as Rashīd Riḍā, considerably broadened the term's scope to encompass adherents of other religious traditions—including Zoroastrianism, Hinduism, Buddhism, and even Confucianism—on the premise that these traditions ultimately derive from authentic divine revelation.<sup>93</sup> The mystical hermeneutics of Ibn al-ʿArabī further reinforced these inclusive tendencies by positing that religious differences constitute diverse manifestations (*tajallī*) of a singular divine reality. These debates highlight the interpretive flexibility of Islamic jurisprudence regarding interfaith marriage and illustrate the historical challenges of maintaining claims to a fixed, absolute *ijmāʿ* on this matter.<sup>94</sup>

The Indonesian context provides a salient example of how classical debates are reinterpreted within contemporary legal frameworks. In 1980, the MUI issued a fatwa prohibiting all forms of interfaith marriage, including unions involving the *Ahl al-Kitāb*. This prohibition was justified based on *maṣlahah* (public welfare) and the principle of *sadd al-dharīʿah* (blocking the means to harm), arguing that the potential *mafsadah* (harm) outweighed any anticipated benefit.<sup>95</sup> However, the fatwa attracted considerable criticism for diverging from the predominant classical *fiqh* position, which generally allowed at least limited permissibility for Muslim men to marry women from among the *Ahl al-Kitāb*.<sup>96</sup> This debate raises fundamental questions concerning the legitimacy of contemporary fatwa institutions to impose restrictions more stringent than those explicitly permitted by Qur'anic texts, and whether such restrictions

<sup>87</sup> Ismāʿīl ibn ʿUmar ibn Katsīr, *Tafsīr al-Qurʾān al-ʿAzīm* (Beirut: Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 583.

<sup>88</sup> Al-Thabarī, *Jāmiʿ al-Bayān ʿan Taʾwīl āy al-Qurʾān* (*Tafsīr al-Ṭabarī*).

<sup>89</sup> Muḥammad ibn Aḥmad al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān* (Cairo: Dār al-Ḥadīth, 2003).

<sup>90</sup> Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*.

<sup>91</sup> Katsīr, *Tafsīr al-Qurʾān al-ʿAzīm*.

<sup>92</sup> Muhammad Quraish Shihab, *Wawasan Al-Qurʾān: Tafsīr Maudhuʿi atas Pelbagai Persoalan Umat* (Bandung: Bandung: Mizan, 1996).

<sup>93</sup> Riḍā, *Tafsīr al-Manār*.

<sup>94</sup> Ibn al-ʿArabī, *Fuṣuṣ al-Ḥikam*, Ed. Abū al-ʿAlā ʿAḍī (Beirut: Beirut: Dār al-Kitāb al-ʿArabī, 1946).

<sup>95</sup> Majelis Ulama Indonesia, "Fatwa Tentang Perkawinan Beda Agama, No. 4/MUNAS II/MUI/1980." See: Puad Muzakkar Siregar, "Relevance of the Fatwa of the Indonesian Ulema Council to the Renewal of Islamic Family Law in Indonesia (Study of MUI Fatwa Number: 4/Munas VII/MUI/8/2005 on Marriage of Different Religions)," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 8, no. 1 (March 2024): 85.

<sup>96</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 2024): 383.

reflect contextual necessities compatible with human rights principles<sup>97</sup> or represent a departure from foundational normative sources. Consequently, the jurisprudence of interfaith marriage remains a dynamic field of interpretive contestation, illustrating Islam's ongoing engagement with modern pluralism.<sup>98</sup>

## CONCLUSION

This study demonstrates that the regulation of interfaith marriage in Muslim-majority societies constitutes a highly complex and contested legal domain, shaped by the interplay of classical *fiqh* doctrines, postcolonial constitutional frameworks, bureaucratic governance, and global human rights discourses. Through a comparative analysis of Egypt, Indonesia, Malaysia, and Turkey, the research identifies a spectrum of regulatory models ranging from absolute prohibition to ambiguous tolerance, and from hybrid regulation to secular permission. These diverse configurations reveal that interfaith marriage serves as a critical site for negotiating broader tensions between Islamic legal epistemology and contemporary normative frameworks. Although the Qur'ān articulates a nuanced distinction between marriages involving the *Ahl al-Kitāb* and those involving polytheists, classical juristic interpretations have never been uniform. Contemporary debates increasingly invoke *maqāṣid al-shari'ah* to justify more context-sensitive and inclusive approaches. This ongoing theological contestation highlights Islamic law's adaptive capacity to respond to evolving socio-political realities while maintaining its normative coherence.

Beyond doctrinal debates, this study demonstrates that Islamic legal authority is not exercised solely through textual sources or formal fatwas but is continuously produced through bureaucratic practices and everyday governance. The emergence of the pivotal role of state bureaucracies and local religious officials in shaping marital outcomes, often through discretionary administrative mechanisms that extend beyond codified law. Concurrently, the globalization of legal strategies—such as cross-border marriage registration—illustrates how interfaith couples actively navigate multiple normative frameworks to reconcile religious identity with legal recognition. These empirical findings underscore the need for targeted policy interventions, including more straightforward regulatory guidelines, enhanced judicial and bureaucratic training, and comprehensive public education initiatives, to reduce legal uncertainty and alleviate the disproportionate burdens faced by interfaith couples. The concept of *fiqh* pragmatism advanced in this study provides a constructive normative framework for harmonizing doctrinal authority with lived realities, emphasizing adaptability, proportionality, and social justice within Islamic legal reasoning.

This study theoretically advances the field of comparative Islamic legal studies by illustrating how interfaith marriage serves as an indicator of how Muslim-majority states navigate the tension between divine normativity and civic equality within contexts of legal pluralism. The analytical framework proposed herein—particularly the notions of negotiated orthodoxy, *fiqh* pragmatism, and street-level *fiqh*—provides novel perspectives for analyzing the formulation of Islamic legal norms beyond formal doctrinal settings. Future research could apply this framework to other domains of personal status law, including inheritance, conversion, and child custody, as well as to digital and transnational religious arenas where

<sup>97</sup> 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 (December 2024): 2308174.

<sup>98</sup> Nanda Azizah Putri et al., "Perkawinan Beda Agama Perspektif Undang-Undang Perkawinan, Kompilasi Hukum Islam, dan Fatwa Majelis Ulama Indonesia No. 4/MUNAS VII/MUI/8/2005," *Al-Ma'āhib: Jurnal Perbandingan Hukum* 11, no. 1 (August 2023): 69.

Islamic legal authority is increasingly contested and redefined. By emphasizing the dynamic interaction among textual sources, institutional structures, and lived experiences, this study underscores that Islamic law constitutes a living tradition, continuously evolving through engagement with pluralism, governance, and the global human rights framework.

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