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Balancing Religious Freedom and Family Protection: Constitutional Issues of Interfaith Marriage in Indonesia from a Maqasid al-Usrah Perspective

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Abstract

This research was motivated by the juridical problem of interfaith marriage in Indonesia. This problem includes the guarantee of the dimension of family goals. This study aims to analyze the guarantee of the dimension of family goals in the constitution of the Indonesian Marriage Law for perpetrators of interfaith marriages. Methodologically, this research is normative juridical research with a qualitative approach to the concept of family goals (maqasid al-usrah) as an analytical perspective. The data analyzed include the Constitution of the Marriage Law Number 16 of 2019, journal articles, books, and other literature related to the discussion. The results of this study indicate that the Indonesian Marriage Law has not guaranteed the dimension of family goals for interfaith marriage practitioners in Indonesia. This study's implications emphasize that family goals (maqasid al-usrah) can serve as a basis for addressing the juridical problem of interfaith marriage in Indonesia. The contextualization of the Marriage Law's constitution in the form of articles that guarantee the dimensions of family goals for perpetrators of interfaith marriage in Indonesia is necessary.

Keywords: *interfaith marriage, constitutional rights, family protection, maqasid al-usrah*

INTRODUCTION

The Indonesian Marriage Law applies to all religious believers.¹ The role of the state is to guarantee and protect its citizens' rights to legal marriage.² However, the constitution

¹ June S. Katz and Ronald S. Katz, "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems," *The American Journal of Comparative Law* 23, no. 4 (1975): 653, <https://doi.org/10.2307/839240>.

² Enggar Wijayanto, "Convergence Legal Politics, Human Rights and Pancasila Towards Interfaith Marriage in Indonesia," *Jurnal Hukum Dan HAM Wicarana* 2, no. 1 (2023): 39–55.



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does not guarantee or protect interfaith marriage relations,³ which should be able to respond with multiple perspectives and multiple values.⁴ This research contributes to the discourse on contextualizing the constitution of the Marriage Law, which guarantees interfaith marriage relations in Indonesia.

Interfaith marriage in Indonesia has been a longstanding problem. This marriage problem is a genuine issue in both legal and normative perspectives.⁵ Juridical interpretation judges this marriage to be unlawful.⁶ The normative interpretation considers this marriage not incompatible with Indonesian marriage culture and contrary to the theological teachings of Indonesian religions.⁷ This juridical and normative problem implies that the dimension of family purpose that should be attached to interfaith marriage is not guaranteed.

Currently, the trend of interfaith marriage practices in Indonesia is relatively increasing⁸ Due to the plurality of tribes, cultures, and religions.⁹ This practice of marriage became a social phenomenon as religious doctrine entered the social and cultural context.¹⁰ Ahmad Nurholish comprehensively elaborated on the data from his research, which obtained data on 638 interfaith marriage couples in Indonesia from 2005 to 2015. The practitioners of the marriage are dominated by Muslim-Christian couples (48%), Muslim-Catholics (42%), and the remaining 10% Muslim-Hindu, Muslim-Buddhist, Muslim-Confucian, Christian-Buddhist, Christian-Hindu, and Christian-Confucian couples. From a geographical aspect, the practice of interfaith marriage mostly occurs in West Java (20%), Central Java (19%), Yogyakarta (15%), East Java (14%), Bali (14%), South Sulawesi (10%), East Kalimantan (6%), Sumatra (1%), and East Nusa Tenggara (1%).¹¹ The data show that the practice of interfaith marriage continues to increase year by year and involves almost all religious believers across Indonesia.

Indonesia's marriage law does not explicitly prohibit interfaith marriage. However, the constitution also provides an interpretation that interfaith marriages in Indonesia cannot be carried out.¹² In many cases, interfaith marriages are performed by various couples and gain the legitimacy of the Civil Registry Office, depending on the District Court's decision, without questioning their normative theological validity.¹³ This reality provides an

³ M. Ya'kub Aiyub Kadir and Fachrian Rzki, "Interfaith Marriage in Indonesia: A Critique of Court Verdicts," *Yuridika* 38, no. 1 (January 1, 2023): 171–90, <https://doi.org/10.20473/ydk.v38i1.38099>.

⁴ Aspandi, "Status Perkawinan Beda Agama Minoritas Muslim Di Bali Dalam Perspektif Maqasid Taha Abdurrahman" (Universitas Islam Negeri Sunan Ampel Surabaya, 2021).

⁵ Rosdiana, Ummu Hanah Yusuf Saumin, and Masayu Mashita Maisarah, "Legitimacy on Interfaith Marriages; an Analysis of the Role of Religious Councils on the Legal Policy in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 81–96, <http://journal.uinjkt.ac.id/index.php/ahkam>.

⁶ Anak Agung et al., "The Legality of Interfaith Marriage Conducted Abroad In The Perspective of Indonesian Law" 2, no. 2 (2023): 117–25.

⁷ Fathol Hedi, Abdul Ghofur Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (2017): 263–76, <https://doi.org/10.20956/halrev.v3i3.1297>.

⁸ Rondang Herlina, "Disparity in Interfaith Marriage : Legal Conflicts on Marriage Regulations and Population Administration," *Proceedings of the 1st International Conference on Toward Kalimantan as the New Capital of the Republic of Indonesia June, 2023*, 248–55.

⁹ Hedi, Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia."

¹⁰ Rosdiana, Saumin, and Maisarah, "Legitimacy on Interfaith Marriages; an Analysis of the Role of Religious Councils on the Legal Policy in Indonesia."

¹¹ Ahmad Nurholish, "Interfaith Marriage in the Constitution and the Islamic Law Dynamics in Indonesia," *Al-Manarid* 15, no. 2 (2015): 123–42, <https://doi.org/10.20885/almawarid.vol15.iss2.art6>.

¹² Kadriah Kadriah, Teuku Saiful, and Muhammad Naufal Hidayat, "Interreligious Marriage According to Indonesian Legislation," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. Iclhr 2020 (2021): 462–68, <https://doi.org/10.2991/assehr.k.210506.060>.

¹³ Sri Wahyuni; Resti Dian Luthviati; Muhammad Jihadul Hayat; Utkarsh K Mishra, "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen" 10, no. 1 (2022): 12–21.

opportunity for interfaith marriages to be legalized¹⁴ both in juridical and normative perspectives.

The Constitution of Marriage Law Number 16 of 2019, which amends Law Number 1 of 1974, does not clearly and explicitly regulate interfaith marriage. This legal vacuum implies that there is no juridical certainty for interfaith marriage couples.¹⁵ This legal vacuum also has implications for the variety of normative juridical interpretations by judges across Indonesia's courts. In many cases, judges' interpretations were deemed unfavorable to interreligious marriage couples. The validity of this marriage cannot be established, so the marriage is considered invalid. This legal vacuum also has implications for the status and position of women and children, and various family problems.¹⁶ Juridical legal certainty for interfaith marriage couples is urgently needed. This is to ensure benefits for families and to protect citizens' rights to legal marriage.

As an institution, interfaith marriage requires juridical legal certainty. Such certainty is needed to ensure the actualization of the dimensions of family purpose (*maqasid al-usrah*), such as the preservation of lineage, by providing certainty that offspring born to clear parents and legal marriage bonds.¹⁷ In addition, legal certainty also guarantees the actualization of human rights, such as the right to have a family and to continue offspring without coercion, and the validity of marriage, as guaranteed in international human rights instruments and Indonesian laws and regulations.¹⁸ Thus, contextualization of the constitution that provides juridical legal certainty for interfaith marriage in Indonesia is necessary.

Various studies on the juridical and normative issues of interfaith marriage in Indonesia have been conducted. Faiq Tobroni's 2016 research analyzed the freedom to engage in interfaith marriage *ijtihad* after the Constitutional Court ruling. This study concludes that the enactment of Article 2, paragraph (1), of the Marriage Law Number 16 of 2019 has legitimized the state as the sole interpreter of religious teachings required for the validity of marriage. The Constitutional Court's ruling has positioned the state not as an interpreter of religious teachings, and it has influenced the model of freedom of interfaith marriage.¹⁹ Fathol Hedi and colleagues' 2017 research analyzed the legal and political challenges posed by interfaith marriage regulations in Indonesia. This study notes that interfaith marriage is inconsistent with the philosophical goals of marriage in Indonesia, which aim to form a happy and eternal family based on God Almighty.²⁰ Research by Erni Suhasti and colleagues in 2018 analyzed the practice of interfaith marriage through the District Court's determination in Surakarta. This research notes that the diverse legal interpretations of the articles of the Compilation of Islamic Law and the Marriage Law create legal instability and uncertainty regarding provisions on interfaith marriage in Indonesia.²¹

¹⁴ Aiyub Kadir and Rzuki, "Interfaith Marriage in Indonesia: A Critique of Court Verdicts."

¹⁵ Meliyani Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia," *Iblam Law Review* 3, no. 1 (2023): 99–110, <https://doi.org/10.52249/ilr.v3i1.119>.

¹⁶ Kadek Indrayanti, "Juridical Implications of The Legal Norm Void of Interfaith Marriages In Indonesia," *Brawijaya Law Journal* 4, no. 1 (March 31, 2017): 129–43, <https://doi.org/10.21776/ub.blj.2017.004.01.07>.

¹⁷ Farida Ulvi Na'imah, "Internalisasi Tradisi Lokal Pada Hukum Perkawinan Anak Di Kabupaten Brebes Perspektif Maqasid Al-Usrah," *Disertasi*, 2020, 1–242.

¹⁸ Sindy Cantonia, Dan Ilyas, and Abdul Majid, "Dan Hak Asasi Manusia (Juridical Review on Interfaith Marriage in Indonesia in the Perspective of Marriage Law and Human Rights)," *Jurnal Hukum Lex Generalis* 2, no. 6 (2021): 510–27, <https://jhlg.rewangrencang.com/>.

¹⁹ Faiq Tobroni, "Kebebasan Hak Ijtihad Nikah Beda Agama Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 3 (2016): 604, <https://doi.org/10.31078/jk1239>.

²⁰ Hedi, Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia."

²¹ Erni Suhasti, Siti Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices," *Al-Jami'ah* 56, no. 2 (2018): 367–94, <https://doi.org/10.14421/ajis.2018.562.367-394>.

Rosdiana and colleagues' 2019 research analyzed the relationship between the Indonesian Religious Council and legal policies on interfaith marriage. This study recommends that the Constitutional Court respond to the reality of interfaith marriage by either confirming or rejecting it.²² Peri Rinda Listyawati's 2020 research analyzed the legal status of interfaith marriage in Indonesia. This study concludes that the legal provisions governing marriage, both express and implicit, do not regulate marriages between followers of different religions.²³ Sri Ahyani and Endang Pujiastuti's 2022 research analyzes the problems of interfaith marriage from a positive legal perspective. This study concludes that the juridical constitution provides various interpretations of the legal vacuum of interfaith marriage in Indonesia.²⁴ Diana Farid's 2022 research analyzed the judge's decision No. 454/pdt.p/2018 on interfaith marriage and concluded that it was subject to the judge's interpretation of Article 2, paragraph (1), of the Marriage Law Number 16 of 2019.²⁵

Andrew Betlehn's 2022 research analyzes restrictions on interfaith marriage in Indonesia from a human rights perspective. The study concludes that, as the international community has stated, human rights clearly guarantee the freedom to marry without restrictions based on religion.²⁶ Imaro Sidqi and Mhd Rasidin's 2023 research analyzes the Constitutional Court decision Number 24/PUU-XX/2022 on interfaith marriage from philosophical, juridical, and empirical-sociological perspectives. This study provides recommendations on balancing individual rights and religious values in interfaith marriages.²⁷ And Lolita Permanasari's 2023 research analyzes the problems of interfaith marriage, civil law perspectives, and human rights. This study concludes that the civil law perspective guarantees that interfaith marriages can be registered only in the civil registry, but this does not mean they are religiously valid. The exemption from human rights in carrying out interfaith marriages must still be subject to the rules of the Law on Marriage Number 16 of 2019.²⁸

Discourse on the problem of interfaith marriage from various perspectives is needed to provide solutions.²⁹ The results of previous research have not addressed various problems, such as legal guarantees and legal certainty, which are normative for interfaith marriage couples, and have not yielded a definitive answer. The problem of ensuring family benefits for interfaith marriage couples has not been clearly answered. The problem of guaranteeing the accommodation of the family purpose dimension for perpetrators of interfaith marriage

²² Rosdiana, Saumin, and Maisarah, "Legitimacy on Interfaith Marriages; an Analysis of the Role of Religious Councils on the Legal Policy in Indonesia."

²³ Peri Rinda Listyawati; Indah Setyowati; Latifah Hanim, "Legal Analysis of The Rejection Interfaith Marriages," *International Journal of Law Reconstruction* 4, no. 2 (2020): 110–23, <http://journal.um-surabaya.ac.id/index.php/JKM/article/view/2203%0Ahttp://mpoc.org.my/malaysian-palm-oil-industry/>.

²⁴ Sri Ahyani; Endang Pujiastuti, "Problems of Different Religion Marriage in Indonesia Attached to Positive Law," *International Journal of Social Science And Human Research* 05, no. 12 (2022): 5722–26, <https://doi.org/10.47191/ijsshr/v5-i12-58>.

²⁵ Diana; Muhammad Husni Abdulah Pakarti; Hendriana; Iffah Fathiah Farid, "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court," *Al-Istinbath Jurnal Hukum Islam* 7, no. 2 (2022): 347–62.

²⁶ Andrew Betlehn, "Limitations on Interfaith Marriage Practices in Indonesia According to Human Rights Perspective," *International Journal of Social Science and Human Research* 05, no. 04 (2022): 1325–31, <https://doi.org/10.47191/ijsshr/v5-i4-17>.

²⁷ Imaro Sidqi, "Prohibition of Interfaith Marriage in Indonesia : A Study of Constitutional Court Decision Number 24 / PUU-XX / 2022," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 154–72.

²⁸ Lolita Permanasari, "Legal Analysis of Interfaith Marriage in Indonesia," *Journal Of Law Theory And Law Enforcement* 2, no. 1 (2023): 35–44, <https://doi.org/10.56943/jlte.v2i1.282>.

²⁹ Kadek Wiwik Indrayanti; Suhariningsih; Masruchin Ruba'i; Nurini Aprillianda, "Religious Values and Beliefs Toward Interfaith Marriage in Indonesia in Pluraism Perspective," *Academic Research International* 8, no. 3 (2017): 58–64.

in the constitution of the Indonesian marriage law has also not been resolved. The problem of contextualizing the constitution of the Marriage Law that guarantees the benefit of the family has also not received a clear and definite formulation and form. These various problems require a comprehensive study to provide relevant and significant solutions to solve the normative juridical problem of interfaith marriage in Indonesia.

Based on the results of various problem surveys that have not been addressed by previous researchers, this study implicitly analyzes the guarantee of the dimension of family purpose (*maqasid al-usrah*) for interfaith marriage couples in the Indonesian Marriage Law. This study specifically examines whether the constitution of Marriage Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, has guaranteed and protected the basic human rights contained in the concept of the purpose of marriage (*maqasid al-usrah*) for interfaith marriage couples. The guarantee of the dimension of family purpose for interfaith marriage couples must be considered and become a necessity for the Indonesian marriage constitution. To describe the focus of the study in question, this study first explains the academic justification that is the basis of the study, followed by an explanation of the juridical problems of the constitution of the Indonesian marriage law related to interfaith marriage and an analysis of the guarantee of the dimension of the purpose of marriage (*maqasid al-usrah*) for interfaith marriage couples.

RESEARCH METHOD

This study aims to analyze the guarantee of the family purpose dimension in the constitution of the marriage law for interfaith marriage couples in Indonesia. This study analyzes legal texts and principles in the Indonesian Marriage Law to address the legal question of interfaith marriage in Indonesia. In particular, this study examines the rules, norms, and legal principles in the Indonesian Marriage Law regarding interfaith marriage. This study uses primary legal materials, including constitutional materials on Marriage Law Number 16 of 2019, which amends Law Number 1 of 1974 on marriage, as well as secondary legal materials such as books, journal articles, relevant information media, and other sources related to the research problem. The data collection method uses literature techniques to gather primary and secondary legal materials. Methodologically, this research is normative juridical research. Using a qualitative approach, this study analyzes the rules, norms, and legal principles in the Marriage Law Number 16 of 2019 regarding interfaith marriage. With a philosophical approach to family goals (*maqasid al-usrah*) as an analytical perspective, this study ensures that the dimension of family goals is guaranteed for interfaith marriage couples in the Indonesian Marriage Law.

RESULT AND DISCUSSION

Juridical Problems of the Constitution of Interfaith Marriage in Indonesia

The Constitution of Marriage Law Number 16 of 2019, concerning amendments to Law Number 1 of 1974 on Marriage, which regulates marriage and serves as the legal basis for marriage, as a guide, and a guarantee of legal certainty in various aspects of marriage for all religious believers and groups in Indonesia, is necessary.³⁰ This is because the Republic of Indonesia is a state based on the principles of modern law and democratic law.³¹ Thus, executive, legislative, and judicial powers and duties are subject to and follow the rules of law

³⁰ Sakirman, "Urgensi Reaktualisasi Undang-Undang Perkawinan Di Indonesia," *Justicia Islamica* 13, no. 1 (2016): 91–112.

³¹ Padmo Wahjono, *Indonesia Negara Berdasarkan Atas Hukum*, 2nd ed. (Jakarta: Ghalia Indonesia, 1986).

or legislation.³² An active and dynamic concept of the rule of law, constitution, and democracy is needed by the Indonesian state to fulfill its responsibility to protect and promote the welfare of society, grounded in the principles of social justice.³³ This principle should be incorporated into Indonesian marriage law, which should also clearly and unequivocally regulate interfaith marriage.

The Constitution of Marriage Law Number 16 of 2019, which regulates various aspects of marriage in Indonesia, comprises 14 chapters and 67 articles.³⁴ Chapter one, which contains the basis of marriage, consists of 5 chapters, each containing 2 verses, for a total of 10 verses. Chapter two contains the conditions of marriage, consisting of 7 articles covering aspects of the consent of both prospective brides, parental consent, minimum limits for both prospective brides, prohibition of marriage with people who are haram to marry (mahram), prohibition of marriage with candidates who have marriage ties, and waiting period rules for divorced wives.

Chapter three contains rules for preventing marriage. The articles in this chapter regulate the parties who can prevent marriage. In addition, this article also sets out prohibitions for marriage registration employees. Chapter four deals with the annulment of marriage. The articles of this chapter regulate the parties and regulations for the application for annulment of marriage to the court. Chapter five contains the rules of the marriage agreement. This chapter regulates the regulation of written agreements for the bride and groom before the marriage registrar.³⁵

Chapter six contains rules on the rights and duties of husband and wife. This chapter regulates the rights and obligations of husband and wife, including their physical and mental aspects. Chapter seven contains rules about property. This chapter regulates the regulation of joint property and conjugal property. Chapter eight contains rules about the breakup of marriage and its consequences. This chapter regulates the dissolution of marriage and its legal consequences for both parties.³⁶

Chapter Nine contains rules about the position of children. This chapter regulates the position of children born to legally married parents or to parents in an illegal marriage. Chapter ten regulates the rights and obligations between parents and children. This chapter regulates parental obligations to children and children's obligations to parents. Chapter eleven contains rules on guardianship. This chapter regulates the regulation of parties and guardianship procedures in marriage.³⁷

Chapter twelve contains other provisions divided into four parts. The first part regulates the regulation on proving the origin of children. The second part regulates marriage outside Indonesia. The third section regulates mixed marriages. Part four provides for the regulation of marriage courts, including religious courts and general courts. Chapter thirteen contains rules on transitional provisions. And chapter fourteen contains a closing. This chapter states that the constitution of Marriage Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, is effective from its promulgation and is regulated by government regulations.³⁸

³² Qodri Azizy, *Eklektisisme Hukum Nasional; Kompetisi Antara Hukum Islam Dan Hukum Umum* (Yogyakarta: Gama Media, 2002).

³³ Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat," *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012): 141–52, <https://doi.org/10.31943/yustitia.v7i2.144>.

³⁴ Kementerian Sekretariat Negara RI, "Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

³⁵ Kementerian Sekretariat Negara RI.

³⁶ Kementerian Sekretariat Negara RI.

³⁷ Kementerian Sekretariat Negara RI.

³⁸ Kementerian Sekretariat Negara RI.

The Constitution of Marriage Law Number 16 of 2019, which opposes marriage, is a national marriage law. Therefore, all citizens must follow these rules regarding marriage. In Amir Syarifuddin's view, the constitution is considered religious, as Islamic law's teachings and views on marriage jurisprudence are more dominant.³⁹ This view is reinforced by Usman Musthafa, who also stated that the Marriage Law is part of Islamic law. The marriage constitution contains the values or objectives of Islamic law (*maqasid al-shariah*), such as maintaining religion (*hifz al-din*), guarding reason (*hifz al-'aql*), guarding the soul (*hifz al-nafs*), guarding offspring (*hifz al-nasl*), and safeguarding property (*hifz al-mal*), inherent in various articles of the Marriage Law Number 16 of 2019 About the marriage.⁴⁰ The principles and objectives of Islamic law attached to the Indonesian marriage constitution should serve as the basis for all religious believers to obtain social justice guarantees in the context of interfaith marriage.

The Constitution of Marriage Law Number 16 of 2019, which regulates various aspects of marriage, does not accommodate the legal policies of marriage from various religions.⁴¹ The constitution does not explicitly regulate interfaith marriage. The lack of explicit regulation of interfaith marriage in the Indonesian marriage constitution is closely related to legal and political issues. Fathol Hadi, in his research, concluded that three aspects of legal politics underpinned the non-regulation of interfaith marriage in Indonesia: the rejection of the DPR faction, considered contrary to Indonesia's marriage culture, and the rejection of religious teachings in Indonesia.⁴²

The political dynamics of interfaith marriage law in Indonesia became an actual issue, though in the end, all factions of the people's representatives agreed not to be explicitly regulated in Indonesian marriage law. In addition, the socio-cultural deed shows that the majority of Indonesian Muslims reject interfaith marriage. Because the marriage was considered contrary to Islamic beliefs and law. Meanwhile, the theological perspective of official religions recognized by the state, such as Islam, Christianity, Catholicism, Hinduism, and Buddhism, also prohibits interfaith forms of marriage. From a theological aspect, interfaith marriage is not in accordance with the marriage system based on religion. Because the marriage violates the tenets of each religion.⁴³

Before the enactment of the Marriage Law No. 1 of 1974, interfaith marriage in Indonesia was primarily regulated by the *Gemengde Huwelijken Regeling* (GHR), which addressed mixed marriages. Article 1 of the GHR states that a mixed marriage is a marriage between persons in Indonesia subject to different laws.⁴⁴ This explanation of "different laws" is interpreted to mean that they differ across nations, regions, groups, and religions.⁴⁵ In addition, Article 7, paragraph (2) of the GHR states that in mixed marriages, differences in religion, nationality, or origin cannot be a barrier to marriage.⁴⁶

The regulation of interfaith marriage before the constitution of the Marriage Law Number 1 of 1974 against Marriage has provided firmer and clearer legal certainty. Meanwhile, the current constitution of the Marriage Law does not clearly and firmly regulate

³⁹ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia Antara Fikih Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana Prenada Media Group, 2014).

⁴⁰ Usman Musthafa, *Pembaharuan Hukum Keluarga Kajian Tentang Maqasid Al-Shariah Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan* (Karawang: Yayasan Pendidikan Nur Taman, 2022).

⁴¹ Rosdiana, Saumin, and Maisarah, "Legitimacy on Interfaith Marriages; an Analysis of the Role of Religious Councils on the Legal Policy in Indonesia."

⁴² Hedi, Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia."

⁴³ Hedi, Anshori, and Harun.

⁴⁴ "Gemengde Huwelijken Regeling (GHR) Stbl. 1898 No. 158" (1898).

⁴⁵ Sudargo Gautama, *Intergroup Law: An Introduction* (Jakarta: Ichtar Baru, 1993).

⁴⁶ Gemengde Huwelijken Regeling (GHR) stbl. 1898 No. 158.

its regulations, so this obscures the phenomenon of interfaith marriage, which is relatively common in Indonesia.⁴⁷ Therefore, the Indonesian government must accommodate interfaith marriage in the Marriage Law to ensure equal legal certainty for all people, regardless of religion, throughout Indonesia.

The phenomenon of interfaith marriage in Indonesia is relatively common from year to year.⁴⁸ Meanwhile, the existing regulations and the constitution of the marriage law are inadequate.⁴⁹ Explicitly, the Marriage Law Number 16 of 2019 does not contain regulations related to interfaith marriage. In practice, the marriage constitution raises several normative legal issues related to interfaith marriage in Indonesia.

The main juridical problem of the constitution of the Law on Marriage Number 16 of 2019 concerning Marriage is the existence of a legal vacuum⁵⁰ and uncertainty over the legal status of interfaith marriages.⁵¹ Explicitly, the marriage law does not clearly and unequivocally state the rules on interfaith marriage.⁵² Juridically, the status of interfaith marriage in Indonesia has not received legal certainty. This is because the marriage constitution in the Indonesian Marriage Law Number 16 of 2019 does not accommodate the legal policy of interfaith marriage.⁵³ This fact should be an important reason for the Government to contextualize it by providing juridical guarantees for the practice of interfaith marriage in Indonesia. The Indonesian government must also accommodate interfaith marriage regulations to provide legal certainty to all communities.

Another juridical problem in the constitution of the Law on Marriage Number 16 of 2019 concerning Marriage is the variety of interpretations, with implications for the juridical status of interfaith marriage. In practice, this interpretation of marriage law in court often results in a dualism of different rulings. On the one hand, the Court allows interfaith marriages under certain conditions, as in the Surakarta District Court's Decision Number 454/pdt.p/2018,⁵⁴ But on the other hand, the court forbade it for different reasons,⁵⁵ such as the decision of the Constitutional Court (MK) Number 68 / PUU-XII / 2014, which rejected the judicial review of interfaith marriage regulations under the Indonesian Marriage Law, which were considered unreasonable under the law.⁵⁶ This Constitutional Court ruling normatively embodies human rights values but is not limited to freedoms restricted by religion.

The void of juridical law and the dualism of legal interpretation in the constitution of the Marriage Law on the validity of interfaith marriage in Indonesia cannot be allowed to continue. The validity of interfaith marriage is not only a legal issue, but also a socio-religious

⁴⁷ Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia."

⁴⁸ Nurcholish, "Interfaith Marriage in the Constitution and the Islamic Law Dynamics in Indonesia."

⁴⁹ Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia."

⁵⁰ The vacuum of law (*rechtsvacuum*) means a state where there is no law or rule, or particularly there a vacuum of rules or constitution (*wetvacuum*) toward something. Jazim Hamidi, *Hermenutika Hukum* (Malang: UB Press, 2011).

⁵¹ Suhasti, Djazimah, and Hartini, "Polemics on Interfaith Marriage in Indonesia between Rules and Practices."

⁵² Sidiqah, "Legal Vacuum in Interfaith Marriage Rules in Indonesia."

⁵³ Rosdiana, Saumin, and Maisarah, "Legitimacy on Interfaith Marriages; an Analysis of the Role of Religious Councils on the Legal Policy in Indonesia."

⁵⁴ Farid, "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court."

⁵⁵ Hedi, Anshori, and Harun, "Legal Policy of Interfaith Marriage in Indonesia."

⁵⁶ Danu Aris Setiyanto, "Perkawinan Beda Agama Pasca Putusan Mahkamah Konstitusi Nomor 68/PUU-XII/2014 Dalam Perspektif HAM," *Al Ahwal* 9, no. 1 (2016): 13–30.

issue.⁵⁷ It has a negative impact on social and religious life. In addition, there are negative features, such as smuggling social and religious values and smuggling juridical values. To overcome these juridical problems, there is a clear legal guideline that provides a clear legal framework and does not lead to multiple interpretations.⁵⁸ This legal problem requires alternative solutions to ensure legal certainty and achieve social justice for all Indonesian people.

Dimension *Maqasid al-Ushrah* Interfaith Marriage in the Marriage Constitution in Indonesia

The family is an institution in social life, so it demands protection and fulfillment of rights and obligations for all its members.⁵⁹ In response to this, the idea of the family's goals (*maqasid al-usrah*) became one of the concepts that developed in family law discourse. This concept is the contribution of Muslim scholars within the movement for the renewal of family law, grounded in values and approaches that align with the objectives of Islamic law (*maqasid al-shariah*).⁶⁰ This concept is also an attempt to actualize the specific goals of Islamic family law.

The family (*maqasid al-usrah*) is a concept in Islam that emphasizes the family's primary purpose. This concept aims to provide guidance and direction in living family life.⁶¹ This concept has several main purposes of a family, including worship, welfare, education, moral development, protection, and social harmony.⁶² The concept also aims to create spiritually and socially strong families, capable of making a positive contribution to society.⁶³ This concept aligns with Islamic principles that emphasize justice, kindness, and harmony in family and community life.⁶⁴ Thus, this dimension of family purpose (*maqasid al-usrah*) becomes relevant as an approach to solve the juridical problem of interfaith marriage in Indonesia.

Conceptually, the dimension of family purpose (*maqasid al-usrah*) is part of the specific purpose of Islamic law (*maqasid al-shariah al-khassah*), which is beneficial and maintains the general good through special actions, such as deeds in family law. Ibn Assyria's description of the dimension of family purpose (*maqasid al-usrah*) includes four dimensions.⁶⁵ In addition, the conceptual dimension of family goals (*maqasid al-usrah*) is also emphasized by Jamaluddin Atiyyah with seven dimensions⁶⁶ as in the following table;

Table 1. The Dimension of Family Purpose (*Maqasid al-Ushrah*) of Ibn Asyur

No	Dimensions of <i>maqasid al-usrah</i> Ibn Asyur
1	Strengthening the bond of marriage (<i>asiratu al-nikah</i>)
2	Strengthening nasab ties and kinship (<i>asiratu al-nasab wa al-qarabah</i>)

⁵⁷ Ayub Mursalin, "Legalitas Perkawinan Beda Agama : Mengungkap Disparitas Putusan Pengadilan Di Indonesia," *Undang Jurnal Hukum* 6, no. 1 (2023): 113–50, <https://doi.org/10.22437/ujh.6.1.113-150>.

⁵⁸ Herlina, "Disparity in Interfaith Marriage : Legal Conflicts on Marriage Regulations and Population Administration."

⁵⁹ Asyur, *Maqasid Al-Shariah Al-Islamiyyah*.

⁶⁰ Farida Ulvi Na'imah; Nuril Habibi; Nasrun Jauhari; Aspandi, "Membangun Instansi Keagamaan Dengan Maqasid Al-Syari'ah Dalam Urusan Keluarga" 7, no. 1 (2022): 111–40.

⁶¹ Asyur, *Maqasid Al-Shariah Al-Islamiyyah*.

⁶² Zaenab Al-Alwani, *Al-Ushrah Fi Maqasid Al-Syari'ah* (London: The International Institute of Islamic Thought, 2013).

⁶³ Jamaluddin Atiyyah, *Nahw Taf'il Maqasid Al-Shariah* (Virginia: The International Institute of Islamic Thought, 2008).

⁶⁴ Muhammad Rashid Rida, *Al-Hayab Al-Zawjiyyah* (Kuwait: Maktabah al-Imam al-Dhahabi, 2011).

⁶⁵ Asyur, *Maqasid Al-Shariah Al-Islamiyyah*.

⁶⁶ Atiyyah, *Nahw Taf'il Maqasid Al-Shariah*.

3	Strengthening the bonds of marital relatives (<i>asiratu al-sabrah</i>)
4	Peaceful settlement of conflicts on the three bonds (<i>inhilal awasir al-usrah bi al-salam</i>)

Table 2. The Dimension of Family Purpose (*Maqasid al-Ushrah*) of Jamaluddin Atiyyah

No	Dimensions of <i>Maqasid al-Ushrah</i> Jamaluddin Atiyyah
1	Warranty certainty of the marriage bond of two kinds of human beings (<i>tanzim al-alaqah bayn al-jinsayn</i>)
2	Warranty hereditary sustainability (<i>hifz al-nasl</i>)
3	Assurance of peace, love, and compassion (<i>tabqiq al-saken wa al-mawaddah wa al-rahmah</i>)
4	Warranty certainty of lineage (<i>hifz al-nasab</i>)
5	Guarantee of the preservation of religious rights in the family (<i>hifz al-tadayyun fi al-usrah</i>)
6	Guarantee of certainty of basic aspects of the family (<i>tanzim al-janib al-mu'assasi li al-usrah</i>)
7	Guarantee of certainty of family economic regulation (<i>tanzim al-janib al-mal li al-usrah</i>)

The dimension of family purpose (*maqasid al-usrah*) is a concept in Islam that refers to the principles and purposes of the family, intended to protect individual rights, ensure justice, and promote the welfare of society.⁶⁷ In this context, this dimension of family purpose (*maqasid al-usrah*) should be incorporated into the constitution of Marriage Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage and regulates marriage and provides guarantees for all citizens.⁶⁸ Thus, the constitution of this Marriage Law can provide legal certainty for various marriage relations, including interfaith marriages, protect women's rights, and create laws in line with the demands of the times.⁶⁹ In other words, the inclusion of the dimension of family purpose (*maqasid al-usrah*) in the Marriage Law provides the same benefits and legal certainty to all religious communities across Indonesia.

The dimension of family purpose (*maqasid al-usrah*) is a concept in Islam that refers to the family's purpose and benefits in everyday life.⁷⁰ In the context of interfaith marriage, the importance of the family purpose dimension (*maqasid al-usrah*) is evident, as it can serve as a guide in creating healthy, harmonious marital relationships for couples of different religions. Some of the reasons why this dimension is important as the basis for the constitution of interfaith marriage include:

First, it guarantees the certainty of legal relations between males and females. Islamic law, which is a guide to life that contains justice, compassion, wisdom, and kindness,⁷¹ has explained various aspects of male-female relations, including recommendations for marriage, rules of polygamy, prohibitions on relations outside the bonds of marriage and on adultery, rules for exercising equal rights and obligations between couples, and other rules related to

⁶⁷ Asyur, *Maqasid Al-Shariah Al-Islamiyyah*.

⁶⁸ Musthafa, *Pembaharuan Hukum Keluarga Kajian Tentang Maqasid Al-Shariah Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

⁶⁹ Dikson T Yasin, "Objektifikasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan; Sebuah Gagasan Pemikiran," *Al-Mizan* 12, no. 1 (2016).

⁷⁰ Atiyyah, *Nabw Taf'il Maqasid Al-Shariah*.

⁷¹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (International Institute of Islamic Thought, 2008), <https://doi.org/10.2307/j.ctvkc67tg>.

marital relations.⁷² The accommodation of the dimension of family purpose (*maqasid al-usrah*) for interfaith marriage in the constitution of Marriage Law Number 16 of 2019 will provide assurance that the interfaith marriage bond is a valid marriage bond. The accommodation of this dimension also ensures that the marital status of persons of different religions has legal certainty, thereby eliminating the problem of dualism interpretation, which has implications for the validity of the marriage.

Second, provide legal rights to preserve offspring. Preserving offspring is part of the purpose of Islamic law (*maqasid al-shariah*).⁷³ In order to guarantee dignified offspring, Islamic law regulates the institution of the legal reproductive system, the necessity of marriage with other sexes, the prohibition of adultery, the prohibition of celibacy, the prohibition of abortion, the prohibition of medical treatment of women's reproductive organs in order to avoid having children, and other regulations.⁷⁴ The accommodation of the family purpose dimension (*maqasid al-usrah*) for interfaith marriages in the constitution of Marriage Law Number 16 of 2019 will ensure the legal recognition of the offspring of interfaith marriage couples. This dimension also provides welfare and security guarantees for the offspring of interfaith marriage partners.

Third, provide guarantees of peace, love, and affection in the family. Legal marital relations are not only a means to meet biological needs, but also a means that has implications for psychological conditions. A legal marriage relationship will create a psychological calm, peaceful, and serene. This becomes one of the goals of the family dimension (*maqasid al-usrah*). To realize this dimension, Islamic law also regulates the pattern of the husband-and-wife relationship, described as '*mu'asharah bi al-ma'ruf*', that is, the best ways that do not harm both partners.⁷⁵ The accommodation of the family purpose dimension (*maqasid al-usrah*) for interfaith marriage in the constitution of Marriage Law Number 16 of 2019 will guarantee certainty that interfaith marriage relations are not a violation of the law. The accommodation of this dimension guarantees a sense of tranquility and comfort for both partners in living married life together. This dimension also helps couples understand the primary purpose of marriage: to create a peaceful, harmonious life grounded in religious principles. This can help couples of different religions to find common ground in the purpose of marriage.

Fourth, it guarantees the certainty of a valid lineage. This dimension ensures that children are born to married parents. To realize this goal, Islamic law strictly forbids adultery, which results in an unclear lineage of a child. Islamic law also sets waiting limits for women who divorce their husbands, whether due to divorce to death or not to be able to remarry (*iddah*), and how to deny and establish lineage.⁷⁶ The accommodation of the family purpose dimension (*maqasid al-usrah*) for interfaith marriages in the constitution of Marriage Law Number 16 of 2019 will provide assurance that children born of interfaith marriages are legitimate. This dimension also ensures that every child born is entitled to their lineage.

Fifth, provide religious guarantees in the family. Agama becomes a very important factor in family relationships. That is because the family is the most conducive institution for doing good to one another and carrying out religious orders. Religious and family conditions will form a family more conducive to carrying out the teachings of Islam, so that the family can serve as a medium for seeking the pleasure of Allah.⁷⁷ The accommodation of the family purpose dimension (*maqasid al-usrah*) for interfaith marriages in the constitution of Marriage

⁷² Atiyyah, *Nabw Taf'il Maqasid Al-Shariah*.

⁷³ Al-Ghazali, *Al-Mustashfa Min Ilm Ushul*, 2nd ed. (Beirut: al-Risalah, 1997).

⁷⁴ Atiyyah, *Nabw Taf'il Maqasid Al-Shariah*.

⁷⁵ Atiyyah.

⁷⁶ Atiyyah.

⁷⁷ Atiyyah.

Law Number 16 of 2019 will guarantee that the right to freedom in religion for interfaith couples is maintained. In addition, this dimension ensures the absence of violations of or coercion in religion in marital relations.

Sixth, provide assurance of certainty in family relationship patterns. Marital relations have implications for the emergence of various new relationship patterns with binding provisions, such as kinship relations, mahram relations, guardianship relations, and other relationships that, in Islam, are regulated to realize justice and benefit.⁷⁸ The inclusion of the dimension of family goals (*maqasid al-usrah*) for interfaith marriages in the constitution of Marriage Law Number 16 of 2019 will ensure certainty regarding the various forms of these relationships. Thus, the benefit of this dimension not only has special implications for small families (*al-usrah al-nawawiyah*) but also has implications for the benefit of large families (*al-usrah al-muwassa'ah*), including relatives and families of spouses.

Seventh, provide assurance regarding the family's financial situation. Marriage in Islam became the entrance to the birth of new rules related to the financial aspects of the family, such as the obligation of dowry for the husband to the wife, the obligation to provide for the husband to his wife and children, inheritance in the family, guardianship of property, and various other rules related to the financial aspects of the family.⁷⁹ The inclusion of the dimension of family goals (*maqasid al-usrah*) in the constitution of the Marriage Law Number 16 of 2019 will provide clarity on various aspects of family finances arising from interfaith marriages.

It's important to remember that interfaith marriage can be a complex challenge, and not the right choice for everyone. However, for couples who decide to enter into such marriages, an understanding of the dimensions of family purpose (*maqasid al-usrah*) can help create a strong framework for maintaining harmonious, balanced family relationships. Mutual agreement and commitment to the principles of this dimension can encourage couples to build tolerance and harmony in family relationships. This includes respect for religious differences and couples' beliefs, as well as other aspects related to religious beliefs and practices.

CONCLUSION

The Indonesian Marriage Law does not explicitly guarantee legal certainty for interfaith marriages. Juridically, the constitution does not guarantee the dimension of family purpose (*maqasid al-usrah*) for interfaith marriage couples. In this context, the constitution of the marriage law has not provided guarantees for the certainty of the marriage bond (*tanzim al-alaqah bayn al-jinsayn*), the guarantee of the certainty of the preservation of offspring (*hifz al-nasl*), has not provided guarantees for the certainty of peace, love and affection (*tabqiq al-sakn wa al-mawaddah wa al-rahmah*), the guarantee of the certainty of lineage (*hifz al-nashb*), the guarantee of the certainty of maintaining religious rights in the family (*hifz al-tadayyun fi al-usrah*), the guarantee of the certainty of basic aspects of the family (*tanzim al-janib al-mu'assasi li al-usrah*) and the guarantee of certainty of family economic regulation (*tanzim al-janib al-mali li al-usrah*) that should be obtained by all marriage partners without discrimination to couples who have different religions. Constitutionalizing laws and regulations governing interfaith marriage should be carried out to ensure that the law aligns with the fundamental principles of family purpose (*maqasid al-usrah*). The implications of this study emphasize that the dimension of family goals (*maqasid al-usrah*) can serve as a basis for juridical resolution of interfaith marriage issues in Indonesia.

⁷⁸ Atiyyah.

⁷⁹ Atiyyah.

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