

# **A Study of Fatwa-Making: Indonesian Ulama Council (Majelis Ulama Indonesia, MUI) and Classical Islamic Discourse on Interfaith Marriages**

**A Thesis**

**Submitted to Master's Study Program of Islamic Studies at the Faculty of Islamic Studies in partial fulfillment of the requirements for the degree of**

**Master of Arts (M.A.)**



**Universitas  
Islam Internasional  
Indonesia**

by:

**Muhammad Arrafii**

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## **ABSTRACT**

The issue of interfaith marriage has become a religious polemic that continues to exist in society. In Indonesia, the Indonesian Ulama Council (or *Majelis Ulama Indonesia*) has issued fatwas banning religious differences since 1975, 1981, 1986, until 2005. All of which prohibit the marriage of Muslim men with non-Muslims. Interestingly, the MUI's fatwa opposed the majority of classical scholars, because Muslim men with non-Muslim women are permissible in classical literature. On the other hand, Muslim communities in Muslim-majority countries have progressively transcended racial, religious, and social differences. The rate of interfaith marriage in Muslim countries is increasing due to globalization, which has raised such controversial issues that some contemporary scholars have reinterpreted the issue based on understanding the related scriptural text. However, this study will examine the interfaith marriage of the MUI fatwa by reviewing the views of classical scholars on the issue. This study aims to answer questions about: first, how legal doctrine proposed by classical scholars and contemporary scholars is; second, the background to the MUI fatwa and the basis for the arguments presented; and third, the dynamics of the emergence of interfaith marriage rules in Indonesia. This study compared Islamic legal tradition with MUI fatwa arguments in its analysis. This study employs classical Islamic literature such *tafsir* books, the book of comparative *fiqh madhhab* (or schools), and MUI's document related to the study's topic. However, this research revealed that the Islamic legal tradition has influenced the formulation of the fatwa-making on interfaith marriage from the MUI's standpoint, which disregarded modern viewpoints when examining the interfaith marriage issue. This study adds to the body of information or range of perspectives on the subject of interfaith marriage.

Keywords: *Interfaith Marriage, Fatwa MUI, Islamic Marriage, Islamic Legal Tradition, Classical Muslim Scholars, The Marriage Law of Indonesia.*

## ملخص البحث

أصبحت قضية زواج المسلم بغير المسلمة جدلاً دينياً لا يزال قائماً في المجتمع الإسلامي. في إندونيسيا ، أصدر مجلس العلماء الإندونيسي (أو Majelis Ulama Indonesia ، MUI) فتاوى تحظر زواج باختلافات الدينية منذ ١٩٧٥ ، ١٩٨١ ، ١٩٨٦ ، حتى ٢٠٠٥. كلها تحظر زواج رجال المسلمين من النساء غير المسلمات. ومن المثير للاهتمام، أن فتوى MUI عارضت غالبية العلماء المتقدمين، لأن رجال المسلمين مع النساء غير المسلمات مسموح به في موقف العلماء المتقدمين. من ناحية أخرى، تجاوزت المجتمعات المسلمة في البلدان ذات الأغلبية المسلمة بشكل تدريجي الاختلافات العرقية والدينية والاجتماعية. يتزايد معدل الزواج بين الأديان في البلدان الإسلامية بسبب العولمة، التي أثارت مثل هذه القضايا المثيرة للجدل التي أعاد بعض العلماء المعاصرين تفسيرها بناءً على فهم النص الديني ذي الصلة. ومع ذلك ، ستبحث هذه الدراسة في زواج الأديان من فتوى مجلس العلماء الإندونيسي من خلال مراجعة آراء العلماء المتقدمين حول هذه القضية. تهدف هذه الدراسة إلى الإجابة عن أسئلة حول: أولاً، كيف تقترح العقيدة القانونية من قبل العلماء المتقدمين والعلماء المعاصرين. ثانياً، خلفية فتوى مجلس العلماء الإندونيسي وأسس الحجج المقدمة ؛ وثالثاً، دوافع لظهور قوانين الزواج باختلافات الأديان في إندونيسيا. قارنت هذه الدراسة الافتراضات الإسلامية التقليدية بأسباب فتوى مجلس العلماء الإندونيسي في تحليلها. الأدب الكلاسيكي، وكتب التفسير، وكتاب الفقه المقارن، ووثيقة MUI المتعلقة بموضوع الدراسة هي مصادر البيانات التي تؤخذ في الاعتبار. ومع ذلك ، كشف هذا البحث أن التقاليد أو قواعد الشرعية الإسلامية كان لها تأثير على صياغة فتوى الزواج باختلافات الأديان من وجهة نظر مجلس العلماء الإندونيسي، والتي تغاضت عن وجهات النظر الحديثة التي ترفض التقاليد الشرعية الإسلامية عند دراسة قضية الزواج باختلاف الأديان. تضيف هذه الدراسة إلى مجموعة المعلومات أو مجموعة وجهات النظر حول موضوع الزواج بين الأديان.

**الكلمات المفتاحية:** الزواج باختلافات الأديان، فتوى مجلس العلماء الإندونيسي، الزواج الإسلامي، قواعد الأحكام الشرعية، العلماء المتقدمين، قوانين إندونيسيا.

## TRANSLITERATION GUIDE

Arabic	Roman	Arabic	Roman	Arabic	Roman
ا	a	س	s	ل	l
ب	b	ش	sh	م	m
ت	t	ص	ṣ	ن	n
ث	th	ض	ḍ	و	w
ج	j	ط	ṭ	ه	h
ح	ḥ	ظ	ẓ	ي	y
خ	kh	ع	'		
د	d	غ	gh		
ذ	dh	ف	f		
ر	r	ق	q		
ز	z	ك	k		

### Short Vocal

Arab Alphabet	Roman Alphabet	Arabic Example	Transliteration
َ	a	جَلَسَ	<i>jalasa</i>
ِ	i	رَكِبَ	<i>rakiba</i>
ُ	u	كُتِبَ	<i>kutiba</i>

### Long Vocal

Arab Alphabet	Roman Alphabet	Arabic Example	Transliteration
اِ/يِ	ā	جَرِي/سَافِر	<i>jarā/sāfar</i>
يِ	ī	سَلِيم	<i>salīm</i>
وِ	ū	سُجُود	<i>sujūd</i>

### Diphthong

Arab Alphabet	Roman Alphabet	Arabic Example	Transliteration
وِ	aw	مَولَا	<i>mawlā</i>
يِ	ay	غَيب	<i>ghayb</i>

Notes:

1. Consonant with shaddah (◌◌) for instance, أُمَّة is written as *ummah* (double letters).
2. Arabic letter *hamzah* (ء) at the beginning of a word is transliterated into “a” not into “^a”. For instance, أَحْمَد is written as *aḥmad* not *`aḥmad*.
3. Arabic script of *alif-lam qamariyah* (ال) is written as “al” at the beginning of words and *alif-lam shamsiyah* (ا) is written in accordance with the first letter at the beginning of words. For instance:  
الميثاق الغليظ : al-mīthāq al-ghalīẓa  
أهل الكتاب : Ahl al-kitāb
4. Arabic letter *ta' marbutah* (ة) is written as “h” when it is located at the end of the words, such as البقرة is written as *al-baqarah*. When located in the middle of a sentence is written as “t”, such as أُمَّةٌ وَسَطًا is written as *ummatan wasaṭan*.

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# GLOSSARY AND ABBREVIATIONS

## DIRECTORY

Ahl al-kitab	: people of the book
Mushrik	: a polytheist
Kāfir	: an unbelieving person
Fiqh	: understanding of human beings
Dar al-Islam	: the land of Islam (Islamic Territory)
Dar al-harb	: the land of war
Dar al-‘Ahd	: the land of peace or agreement
Fatwa	: non-legal opinion in Islam, it refers usually to the qualified Muslim scholars or ulama
Ijtihād	: independent legal investigation
Qiyas	: a restricted form of ijtiḥad and limits personal interpretation to reasoning by analogy
Ijma’	: the consensus of knowledgeable legal scholars in a given age, regarded as infallible
MUI	: Indonesian Ulama Council, (Majelis Ulama Indonesia, MUI)
DPR	: the House of Representatives of the Republic of Indonesia.
Gokar	: a secular party
Haram	: prohibition in Islamic law
Halal	: it is allowed in Islamic law
Makruh	: disfavored or dislike in a view of Islamic law
Mubah	: permissible in Islamic law
Muballigh	: muslim preachers
Sunnah	: recommended
al-mīthāq al-ghalīza	: a sacred relationship
‘Aqd	: a contract
Surah Makkiyah	: a verse was revealed before a hijra
Surah Madaniyyah	: a verse was revealed after a hijra
Bait al-Tā‘a	: the house of obedience
Muhammadiyah	: an Islamic organization is the second largest messes in Indonesia
Nahdhatul Ulama (NU)	: an Islamic organization is first largest masses in Indonesia
Fitnah	: a temptation
Maslahah	: the public interest
Mafsadah	: the public corruption
Sadd al-dharia’	: a blocking means or a way
Ijāb	: the offer by the guardian of her bride’s father
Qābūl	: given to acceptance by a groom
Hudaybiyah	: an agreement war in the period of Muhammad

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Globalization has influenced the development of social issues in the world entering into people's daily lives. The immense globalization has created social issues that challenge the life of human beings, especially Muslims. However, the outcome of globalization has created ease in providing for the needs of lives matter. Nevertheless, it has led to the emergence of social challenges that require legal solutions. In this regard, a *fatwa* (Islamic legal opinion) becomes a legal answer to such challenges that exist in the midst of Muslim society. This effort was made in view of the universality of Islamic rulings. Thus, Islamic law or *fiqh*<sup>1</sup> as the understanding of human beings must always be able to answer the challenges relating to the Islamic perspective. This is because *fiqh* is one of the instruments for understanding the Islamic teachings that require new *ijtihād*<sup>2</sup> due to changing situations, conditions, or even social dimensions.

Islamic teachings emphasize that jurisprudential theory's definition of *maqāshid al-sharia* is to "serve the welfare of people" or "achieve the welfare of people" (or "*tahqīq masālih al- 'ibād*") and that this welfare must always be consistent with societal changes. A fresh idea is constantly required inside this framework. The concept of practicing *ijtihād* is not something new that we are seeing today; however, since the early days of classical Islam tradition, scholars have provided numerous examples to try to practice *ijtihād* in understanding the interpretation of texts, such as the various opinions of Shafi'I (d. 150) due to the place and time during his first *ijtihād* were different with the second *ijtihād* at the same issue, then later it called the old opinion (*qawl qadīm*), while in Iraq, and the new opinion (*qawl jadīd*) while in Egypt.<sup>3</sup>

However, in the Indonesian context, one of the attempts to implement the *shari'a* is to issue a fatwa (pl. *fatawā* or fatwas)<sup>4</sup>. The fatwa is issued when there is a social problem

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<sup>1</sup> Instead of saying *shari'a*, it is considered the ideal teaching in Islam, which is deemed an unchangeable, or immutable norm in Islam. It differs from the *fiqh* or Islamic law which is an understanding of human beings (or Muslim jurists) that leads to the right or wrong answers

<sup>2</sup> Means, Independent legal investigation

<sup>3</sup> See, more discussion on such social changes in reconstructing Islamic legal tradition, by Masud, M. K. (2009). "*Ikhtilaf al-fuqaha: Diversity in fiqh as a social construction*".

<sup>4</sup> Fatwā means an effort to explain religio-legal norms in response to problems that happened in the Muslim community members in their respective times. See, Muhammad Khalid Masud, Brinkley

that requires an answer from an Islamic perspective whether it can be issued by an authoritative Islamic institution or an individual mufti. Although in the pre-modern period, fatwas generally were issued by an individual *Mufti*, in modern times, fatwas are often issued by groups or institutions of the ulama.<sup>5</sup> As a result, there are different fatwa institutions in Indonesia, including Nahdhatul Ulama (NU), which was founded in 1926, and its fatwa body, the *Bahtsul Masāil*; the Muhammadiyah organizations, which was founded in 1912; and MUI, Majelis Ulama Indonesia (MUI), which was founded in 1975; and its fatwa body, the *Komisi Fatwa* (Fatwa Commission).

The establishment of the MUI as a fatwa maker was under the sponsorship of Suharto. Therefore, the formation of the MUI is kind of Suharto's desire. MUI was expected to become a mediator to convey the government's policy and the Muslim community. However, the MUI is a particular council established for deliberation of Muslim scholars, *zu'ama* (leaders), and academia and is a devotee for all people to have Islamic background capacity, competence, and authority to tackle the problems relating to religion that posed in society, and also this council has received the full trust, both from the community and the government.

The MUI's role encompasses a variety of facets, including economic and educational ones in addition to the religious one that receives the majority of attention. The MUI has a special commission known as Komisi Fatwa (the Fatwa Committee), which is primarily tasked with handling matters related to issuing fatwas. The standards for implementing fatwas in the MUI are the foundation upon which this committee bases the performance of its tasks. One of the topics on which MUI has issued a fatwa is the ban on interfaith marriage during the Soeharto era, which was reiterated during the National Conference (or Musyawarah Nasional/MUNAS) in 2005. This fatwa is one of the MUI fatwas that some Indonesians believe to be controversial. In its 2005 fatwa on the prohibition of interfaith marriage, the MUI proclaimed that Muslim women cannot marry non-Muslim men and that Muslim males cannot marry any non-Muslim women. After the fatwa has been established, a more thorough investigation into its genesis is required, especially in light of the traditional Islamic discourse.

However, given the context of the introduction, my main objective is to examine how societal developments influence a fatwa of the MUI. In this regard, I examine the

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Morris Messick, and David Stephan Powers, "Muftis, Fatwas, and Islamic Legal Interpretation," *Islamic Legal Interpretation*, 1996, 3–32.

<sup>5</sup> See, an article by Kaptein, N. J. "The Voice of the Ulama", (2004).

fatwa that MUI issued on interfaith marriage by comparing it to a review of the opinions of both classical and modern scholars as the case for this thesis.

## **1.2 Literature Review on Interfaith Marriages**

### **A. An Early Discussion of Interfaith Marriages**

The way of studying this topic in the contemporary scholarship of Islamic law can be found under various perspectives or studies; sociological, anthropological, religious, and Islamic theological perspectives. To a certain degree, the study of interfaith marriage conducted by Nida Ali in the Western context happens among individuals from diverse ethnic and religious backgrounds. This study suggests the permissibility for conducting an exogamous marriage among Muslim communities.<sup>6</sup> The main factor Ali explores is globalization and migratory models which affects people performing interfaith marriage. While this study has produced that interfaith marriage in Western societies leads to Muslim interfaith marriage to develop an open-minded understanding of Islam besides Muslim stereotypes described in popular Western media, in addition to improving awareness of Muslim identities and Islamic tradition and mainly reducing Western societies' stereotypical notions of Islam in which Islam understood as a conservative religion.<sup>7</sup>

It is evident from the normative approach of the primary Islamic book that discussion of interfaith marriage did not occur among Muslims until the early years of the Medina period of Islamic culture while reviewing classical and modern readings of the Qur'an.<sup>8</sup> The three verses in the Qur'ān that address the topic of interfaith marriages are Q. 2:221, Q. 60:10, and Q. 5:5.

These three verses of the Qur'ān, however, pointed out that the consensus of traditional Muslim scholars in the case of a Muslim woman and a kitābi man is not clearly based on definite textual evidence but rather on a normative understanding of the textual sources at hand. This research was conducted by Leena Salah Azzam and was primarily through the normative text of Qur'ānic commentaries and Muslim jurists' legal discourse approaches. He particularly emphasizes the connection between the two components of

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<sup>6</sup> Nida Ali, "Muslims in Interfaith Marriages in the West: Gender, Globalization, and Pluralism" (Thesis, 2017), 2, <https://macsphere.mcmaster.ca/handle/11375/22214>.

<sup>7</sup> Johanna Marie Buisson, "Interfaith Marriage for Muslim Women: This Day Are Things Good and Pure Made Lawful unto You," *CrossCurrents* 66, no. 4 (2016): 430–49.

<sup>8</sup> Leena Salah Azzam, "The Regulation of Interfaith Marriages in Islamic Legal Discourse," *Theses and Dissertations*, June 1, 2015, 4, <https://fount.aucegypt.edu/etds/129>.

shari'a, *tafsir* books, and *fiqh* sources, and Islam's norm of interfaith marriages.<sup>9</sup> It should be noted that *Shari'a*, the term commonly used interchangeably with Islamic law, is considered an ideal norm regarding the right path to reach God. It is deemed as a universal norm, unchangeable, immutable, and natural law of the Divine.<sup>10</sup>

It is also important to underline the characteristics of Islamic law, that is disagreement among jurists (*ikhtilāf al-fuqahā*) which is one of the most commonly discussed topics in Islamic legal discourse. Based on this, the diversity of opinions of ulama is a natural circumstance constructed in understanding the Qur'ān. If we look at Islamic literature on *ikhtilāf* literature, Ibn Rushd's *Bidayat al-Mujtahid* provides a comparative study of *ikhtilāf* among the diverse Islamic schools of thought, al-Jaziri's *al-Fiqh 'ala al-madhahib al-arba'a* contributes to this subject by explaining the diverse perspectives of disagreement, particularly among the Sunni schools of Islamic law. Thus, these important classical Islamic sources can be analyzed to comprehend the issue of interfaith marriages from various perspectives of *madhahib*. For instance, Abdelnour analyzes several figures in Islam, whether the pro or cons of interfaith marriage.<sup>11</sup> Particularly, the arguments of both parties are investigated here. As is mentioned in his remarks that one of the Muslim perspectives is that exogamous marriage in Islam is prohibited for both and women Muslim as a whole, it is based on the concept of *sadd al-dharāi'* (sl. In Arabic, *al-dharā'* pl. *al-dharāi'*, it refers to 'blocking the means or public corruption') as an exegetical strategy. Although this concept was challenged in terms of validity to be used for the interfaith marriage issue.

Another research on interfaith marriage, focusing mostly on the interfaith marriage of a Muslim woman, explores the concepts of reciprocity and gender equality.<sup>12</sup> In accordance with a study by Elmali, which was carried out in countries with non-Muslim majorities, the traditional interpretation influences injustice and prejudice and runs opposite to the Qur'ān's teachings on equality.<sup>13</sup> Elmali discovered a distinct condition of the Muslim woman in that area, which prevents her from being on par with Muslim males in terms of their levels of intelligence, careers, or ages. As a result, this condition drives

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<sup>9</sup> "The Regulation of Interfaith Marriages in Islamic Legal Discourse" by Leena Salah Azzam," accessed May 27, 2023, <https://fount.aucegypt.edu/etds/129/>.

<sup>10</sup> Khaled Abou El Fadl, "Reasoning with God: Reclaiming Shari'ah in the Modern Age," n.d., xxxii, accessed May 27, 2023.

<sup>11</sup> Mohammed Gamal Abdelnour, "The Islamic Theology of Interfaith Marriages between Theology, Law and Individual Ijtihad," *Singapore, RSIS Interreligious Relations*, no. 17 (2020): 1–14.

<sup>12</sup> Buisson, "Interfaith Marriage for Muslim Women."

<sup>13</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.

Muslim women to select suitable spouses from other faiths by performing the pure intentions of the spouses to maintain the relationship of their religious differences. More or less, it is because of the social phenomenon in that area that forces their mindset to think such opinions. Otherwise, it is similar to Elmali who explores the roots of the Islamic legal debate of how about arguments behind the prohibition of Muslim women's interfaith marriages and the possibility of such marriage.

Aini's study on interfaith marriage and its societal effects, particularly on women's lives, is another important one. It portrays from a socio-historical angle.<sup>14</sup> This study thus implies that interfaith weddings became a social and religious concern in the Indonesian community as well as in the Malaysian situation. The people of Malaysia, however, view interfaith marriage as being more restrictive or challenging to carry out, particularly for those who come from non-Muslim backgrounds. For instance, Sintang analyzed that there must be a specific action,<sup>15</sup> or it is required that non-Muslims convert to Islam before they can marry a Muslim. Similar to this, interfaith marriage is associated with religious conversion in the Mediterranean.<sup>16</sup>

## **B. Majelis Ulama Indonesia's Fatwa**

The early study on MUI was done by Atho Mudzhar. His study limits the fatwa of MUI from 1975 to 1988. It examines these fatwas from the perspective of shari'a principles, and the socio-political factors that have influenced the formation of the fatwas. To elaborate on this discussion, Atho has studied the Islamic schools of law (*madhāhib*) that were mainly the sources of the MUI fatwas.<sup>17</sup> This study produces that the MUI Fatwas are not in one line, whether they support the policy of the government, the demand of the ordinary people, or in between. As known, at first, MUI was established with the support of President Soeharto, therefore some assume that it was intervened by Soeharto to consistently support the government's policy during their cabinets. However, his study seems to be opposed to those people who have that assumption.

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<sup>14</sup> Noryamin Aini, "Inter-Religious Marriage from Socio-Historical Islamic Perspectives," *Brigham Young University Law Review* 2008 (2008): 669.

<sup>15</sup> Suraya Sintang et al., "Conversion to Islam and Interfaith Marriage in Sabah", Malaysia," *The Ahfad Journal* 31, no. 1 (2014): 46.

<sup>16</sup> Paul Sant-Cassia, "Marriages at the Margins: Interfaith Marriages in the Mediterranean," *Journal of Mediterranean Studies* 27, no. 2 (2018): 111–32.

<sup>17</sup> Mohammad Atho, M, *Fatwas of the Council of Indonesia Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988* (Jakarta: Indonesia Netherlands Cooperation in Islamic Studies, 1993).

Hosen undertook a study of MUI discussion on the history of the technique for the mechanism *ijtihad* to issue the fatwa.<sup>18</sup> It was primarily discussed to clarify that MUI, as a semi-governmental mufti, has been practicing collective *ijtihad* since 1975. MUI's first goal is to act as a "translator" of communication between Islamic organizations, common citizens, and the government. Additionally, Hosen's study focused on the MUI's involvement in issuing fatwas between 1975 and 1998 in supporting Indonesian Muslims and addressing their socioeconomic difficulties with reference to Muslim societies in the public domain. In essence, Hosen contends that the MUI must lessen its reliance on the methods developed during the classical era when the social, economic, and political systems were substantially different from those that the MUI today has and were far more complex. However, the process used by the MUI to issue its fatwa on interfaith marriage in 2005 will be examined in my study to see whether this fatwa was based on a traditional Islamic debate or was produced as a result of Indonesia's changing societal structure.

Since the post-Indonesian independence era, namely in the Muslim nations inside Indonesia, which has the biggest Muslim population in the world, the idea of the so-called "Shariatization" phenomenon has evolved. The study conducted by Syafiq Hasyim provided a thorough understanding of the current phenomena, particularly the part played by MUI in influencing the incorporation of shari'a into Indonesian law and public life. This study appears to be the most important fatwa regarding political and economic issues to be looked at from the standpoint of shari'a principles.<sup>19</sup> MUI is represented by a variety of Islamic organizations, whether orthodox or modernist ulama. In order to gain a deeper knowledge of the MUI's fatwa, particularly during the reformation era in 2005, the MUI released the fatwa on the prohibition of pluralism, liberalism, and religious sectarianism as a consequence of Gillespie's study that found connections between this fatwa and certain conditions.<sup>20</sup> First, the MUI's initiatives to rethink its place in transforming Indonesian society's environment. Second, it has been highlighted that a fatwa of this kind is necessary to address the quick changes that society is undergoing. Due to the prevalence of neo-modernist Islamic philosophy in Indonesia throughout the years, this fatwa is third seen as a sort of frustration. In contrast to research by Norshahril, who claims that MUI appears to

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<sup>18</sup> Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998)," *Journal of Islamic Studies* 15, no. 2 (2004): 147–79.

<sup>19</sup> Syafiq Hasyim, "The Shariatization of Indonesia: The Politics of the Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI)," in *The Shariatization of Indonesia* (Brill, 2023), <https://brill.com/display/title/63445>.

<sup>20</sup> Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism and Secularism," *Journal of Islamic Studies* 18, no. 2 (May 1, 2007): 202–40, <https://doi.org/10.1093/jis/etm001>.

be a separate institution and demonstrates its weakness by examining its inability to exert control over the religious discourse in opposition to other societal organizations (*organisasi masyarakat*), this council is thought to be a very influential religious institution in the public sphere.<sup>21</sup> The study of Norshahril thus contributes to the MUI's attempts to reformulate public morality, notably the MUI's function in moralizing entertainment in light of the 2008 pornographic law draft in Indonesia.

### **1.3 Purpose of the Research**

This study aims to understand the discussed Islamic legal discourses on interfaith marriage among scholars, whether they be from the past or the present. In addition, it was necessary to comprehend the socioeconomic situation that led to the MUI issuing the fatwa on interfaith marriage. And this study also was conducted to examine the arguments of MUI fatwas related to interfaith marriage by comparing them with the views of classical scholars. Besides that, it aims to discuss how doctrinal classical scholars had an influence on the formation of the fatwa. Apart from examining the perspective of MUI, this study also aims to explore the views of contemporary scholars who are contrary to the views of classical scholars. Therefore, this study can produce various kinds of perspectives, history, and social backgrounds that encourage scholars or institutions such as the MUI to publish this interfaith marriage fatwa.

Particularly, in the classical literature of Islam. After examining their arguments, doctrinal text references, and juristic investigation growth, I will analyze these traditional Islamic arguments in light of their time and place of residence with regard to the MUI fatwa on the ban on interfaith marriage in Indonesia. But regardless of whether it was a controversial issue in classical history or in contemporary ones, my study will look into how this Islamic legal tradition of interfaith marriage was contested.

### **1.4 Questions of the Research**

To achieve the purpose of my research, I will focus on exploring three main research questions:

1. What is the legal doctrine behind the perspectives of scholars on interfaith marriage from classical Islamic tradition to contemporary ones?
2. To what extent has Islamic legal tradition affected the fatwa-making of MUI on interfaith marriage?

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<sup>21</sup> Norshahril Saat, "Theologians 'Moralising' Indonesia? The Case of the Post-New Order Ulama Council of Indonesia (MUI)," *Asian Journal of Social Science* 44, no. 4-5 (2016): 546-70.

3. How does the MUI negotiate between the doctrinal references and sociological situation in dealing with the state's law of interfaith marriage?

### 1.5 Conceptual Clarification

Some notes for the theoretical framework of this study;

This thesis needs to clarify some terminologies which are used in this research. First, to describe the views of Muslim jurists, it will be dealt with the revealed texts of the Qur'ān and the Sunnah tradition. As known the Qur'ān is the recited text (*al-wahy al-'mathlu*) and the Sunnah is recognized as the unrecited text (*al-wahy ghair al-'mathlu*). The scripture texts were revealed to the Prophet Muhammad, a messenger of God that guides the affairs of mankind. The Qur'ān is literally a word of God (*kalam God*) and consists of many chapters which explained Islamic teachings. It is noted that some of the chapters of the Qur'ān are needed from interpretations of Muslim scholars to comprehend the meaning of the chapter in the Qur'ān. According to this interpretation, it basically leads to diverse perspectives and views understanding on the same text. The part of the Qur'ān which is understood as immutable or unchangeable such as the obligation of *salat*, *zakat*, *hajj* so on, is considered the Shari'a dimension. In contrast, if the part of the Qur'ān is understood and interpreted by ulama differently is thus deemed as a *fiqh* dimension, such as the application of *salat*, the activity of *wudu*, and so on.

Second, Fatwas is literally (sl. *Fatwā* or pl. *Fatawā*) and is basically understood as the legal opinions of scholars who have a non-binding suggestion for the *mustafti* who have a question posed to the mufti. The fatwas were commonly issued by the authorities in order to answer the problems of Muslims that happened in their respective times and in particular circumstances. The complex problems of the people based on the social changes, times, particular circumstances, and certain thoughts might be an indicator of the change in the fatwa-making mechanism.

However, the third, as recorded that some of the existing issues in Muslim countries are the interfaith issue. One might say this issue is a long stand polemic issue in Muslim countries within Indonesia. Indonesia is a country that has a large Muslim population in Indonesia, a variety of ethnic, cultural, racial, and religious structures had been in problematic positions in order to explain the interfaith marriage issue. This issue has been debated among scholars from diverse perspectives, whether it is based on political, sociological, historical, legal, or human rights perspectives or even theological aspects.

## 1.6 The Methodology of Research

This study will employ a qualitative approach. I can say that this research is dominantly library research that will explore the MUI's document, and classical Islamic books, whether it is *fiqh* or *tafsir* books in order to examine the ulama's thoughts in their respective times. Moreover, my research will analyze the fatwa MUI which was reflected in social issues, and the reason why this fatwa was conditioned by its social surroundings at that time.

Particularly, the approach used in this study is to use a historical comparative analysis by studying the document of MUI's fatwas, and its relevant books, articles, and research, as well as analyzing *fiqh* books and the relevant *tafsir* books on the issue. I would like to study by examining books like *al-Fiqh 'alā al-Madhhāhib al-Arba'a*, al-Thabari's book on the *tafsir* discussion, Shaltut's book on his fatwa regarding the issue, and websites which made by Western modern scholars. Meanwhile, some books, articles, and research findings related to the topics of this study will be taken into account to explain the topic in a broad discussion as well as to have a comprehensive understanding of the issue. And I will also explore the MUI's document to explain the fatwa-making of interfaith marriage.

## 1.7 Limitation of Research

Having explained previously, in this regard, I would like to emphasize that there will be two main dimensions in this research. First, the ulama's view in the classical discourse. Second, the fatwa mechanism carried out by the MUI related to the interfaith marriage issue. It should be underlined that the case is limited to the case of a Muslim man's interfaith marriage. The reason why I take this as the case study is that this fatwa opposes the majority views of Muslim jurists. In the classical sources of Islamic tradition, there is a consensus among Muslim jurists that a female Muslim marrying a non-Muslim man is prohibited or harmful (*harām*).

## 1.8 Structure of the Research

There will be four chapters in this thesis. The first chapter of the study is devoted to providing an overview of the case problem that serves as background information and explains the significance of the research project. I will examine the research's prior literature in terms of its debate, analysis, and recommendations for additional investigation, as well as the conceptual elaboration of the study. Additionally, I will describe the purpose of my study in this chapter.

As part of its analysis of Muslim jurists' perspectives, Chapter 2 explores the societal conditions in which they issued their fatwas at the time. This process of issuing fatwas was evident during their era, and it will deal with the fundamental normative references of traditional Islamic practices. Additionally, it will be explained how a fatwa is affected by social issues and the environment, whether this is because of religious doctrine, socioeconomic issues, or even political factors.

This chapter will primarily explore the issue of a Muslim man marrying a non-Muslim lady, concentrating on the opinions of Muslim jurists on the subject and examining their social environment during the early days of Islam. In addition, I will use a book that compares the four schools of Islam to explain this theological discussion and deal with the interpretation of related Qur'ānic verses that were revealed at that time.

The third chapter will examine the MUI fatwa's procedure for forbidding interfaith marriage, specifically the case of an interfaith union between a Muslim man and a Christian. This chapter will largely expand on the opinions of the ulama that were described in chapter two. I will draw on the historiography book, which describes some historical phenomena, and the MUI's compilation of the fatwa to discuss the social backdrop at the time that led the council to issue the fatwa. The fourth chapter will be a discussion of the subject and the conclusion of the study, and it may contribute to the scholarly discussion of the interfaith issue.

## CHAPTER II

### INTERFAITH MARRIAGE AND THE CLASSICAL DISCOURSE OF ISLAM

#### 2.1 An Overview of Islamic Marriage

In recent years, the Muslim community in Muslim-majority nations has progressively transcended racial, religious, and social divides. The rate of interfaith marriage in Muslim nations is rising as a result of globalization, which has given rise to various contentious issues.<sup>22</sup> One of these debates involves Muslim women being married outside of Islam. It has been said that Muslim women should at least be permitted to marry Jews and Christians because of references to the bond between Muslims and the *Ahl al-Kitāb* (the people of the book) in primary Islamic literature.

This chapter examines the laws governing marriage in the traditional Islamic discourse, particularly those that prohibit marriage in which one partner is not a Muslim. The laws controlling Muslim men who wish to marry non-Muslims are less harsh than those governing Muslim women who wish to wed outsiders of Islam.<sup>23</sup> Some contemporary Muslim scholars and researchers contend that these behaviors are not forbidden by Islamic law and that the pluralistic structure of contemporary society justifies the examination of these laws. The essence of Islam can only be understood by recognizing marriage as a sacred commitment and as such, as important to Islam. However, in its purest form, an Islamic marriage is merely a simple civil contract including an offer by the lady or her guardian and an acceptance by the man of dowry payment in exchange. However, despite the fact that the *shari'a* contains certain general guidelines for inheritance, divorce, and maintenance, the partners are allowed to specifically negotiate the terms of their union. The major schools of Islamic jurisprudence offer the same fundamental notions of such marriage, despite the fact that certain scholars have started to urge for re-representing the laws of interfaith marriage.

According to the traditional interpretation of Islamic law, a Muslim man may marry a Christian or a Jew, but a Muslim woman is never permitted to wed a non-Muslim.<sup>24</sup> On the other hand, numerous contemporary scholars are struggling with modernity and social change and require a new interfaith family model. Therefore, interfaith marriage is one of

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<sup>22</sup> Ali, "Muslims in Interfaith Marriages in the West."

<sup>23</sup> Buisson, "Interfaith Marriage for Muslim Women."

<sup>24</sup> Azzam, "The Regulation of Interfaith Marriages in Islamic Legal Discourse."

the many issues that persistent traditionalists and modern reformists within the Muslim world constantly battle over. By highlighting the opinions of ancient experts from diverse sources of legal tradition literature and interpretations of such marriage, this section seeks to provide an essential remark.

Muslim jurists claim that marriage is a contract (*'aqd*) that is established by mutual agreements. Some people believe that marriage is not just a worldly transaction (*mu'āmalah*), but also a component of an act of worship (*'ibādah*).<sup>25</sup> The Prophet Muhammad reportedly said that those who get married have accomplished half of their religious obligations. The Qur'an has a lot to say about unclean marriages having legal authority.<sup>26</sup> However, the contractual nature of marriage is prioritized in legal writings over its larger religious or moral benefits.

This chapter establishes the basic rules governing the marriage contract in classical Islamic jurisprudence (*fiqh*) as presented in legal treatises and related writings produced by Muslim jurists (*fuqahā'*, singing. *faqīh*), from the tenth century C.E (third-century C.E) to the fifteenth century C.E (ninth century).<sup>27</sup> As a case study involving interfaith marriage, this section will examine the legal perspectives of the four schools of Sunni jurisprudence (Hanafi, Maliki, Shafi'i, and Hanbali). However, the main argument of this chapter is that societal change is a pivotal major to assert the juridical decision for a particular issue in the Islamic tradition. This chapter begins to first analyze the definition of marriage in the Qur'an and the purpose of marriage before discussing classical and some contemporary opinions linked to such marriages.

## 2.2 Marriage in the Qur'ān

Marriage in the Qur'ān and *hadith* is the primary institution for the attainment of comfort and happiness for both spouses. The Qur'ān states that men are depicted as garments (*libās*) for their wives and also their women and also women are the garments of men; “They are a robe for you *and you are a robe for them*” (Q. 2:187); The Qur'ān says that the creation of men and the women are by God to recognize each other, as stated: “*He created for you, from yourselves, friends, that ye might dwell in them, and he hath established among you love and mercy.*” (Q. 30:21).<sup>28</sup> Other relevant verses of the Qur'ān

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<sup>25</sup> al-Zayla'ī, Fakhr al-Dīn ibn Uthmān ibn Alī. 2000. *Tabyīn al-Haqāiq Sharh Kanz al-Daqāiq*. Beirut: Dār al-Kutub al-'Ilmiyya, P. 2:444

<sup>26</sup> <https://sunnah.com/mishkat:3096>

<sup>27</sup> Hallaq, Wael. 1997. *History of Islamic Legal Theory: An Introduction to Sunni Usūl al-Fiqh*. Cambridge: Cambridge University Press

<sup>28</sup> Judith E. Tucker, “Women, Family, and Gender in Islamic Law,” p. 38.

suggests for Muslim to find a suitable or appropriate spouse (Q. 2:220 and Q. 4:22–23), proper marriage arrangements (Q. 2:235), and the rights and duties of husband and wife (Q. 4:34), “Men are the protectors and maintainers of the women”. However, all these verses of the al-Qur‘ān have become the basis of the ulama's views in understanding the nature and purpose of this marriage.

### *Marriage in Islam: as Sacred Bond*

Marriage is referred to as 'nikah' in Arabic, which also means a contract or (*'aqd*).<sup>29</sup> In English translation, the term marriage has the same connotation as Matrimony and Wedlock. But this is not just a typical contract we would have in a typical transaction. The Qur'an uses the term '*al-mīthāq al-ghalīza*' to refer to the marital contract because of this agreement. *al-mīthāq al-ghalīza*, which God mentions in the Qur'an (Q. 4:21), is a covenant or a powerful pact. "*And they have taken from you a firm promise, 'al-mīthāq al-ghalīza'?"*

The Qur'anic passage where this identical phrase, '*al-mīthāq al-ghalīza*' is used to describe the covenant between God and the Prophets before they are assigned prophetic responsibilities describes the natural pattern of this contract. According to the Qur'an, marriage is a sacred relationship that serves to symbolize the covenant between God and the Prophets.<sup>30</sup> Marriage, in general, is a contract that permits sex between a man and a woman. Muslims have a different definition of marriage, but it is generally understood by the general public that marriage seeks to legalize this extramarital sex connection for the spouse as well. However, Islam explained the purpose of marriage beyond that, which is by marriage the Muslim is able to preserve the offspring of mankind and to find between the spouse's tension, joy, happiness, and comfort as God has affirmed in the Qur‘ān, verse. 30:21, “*And among His Signs Is this, that He created for you mates from among Yourselfes, that ye may Dwell in tranquillity with them, And He has put love, and mercy between your (hearts): Verily in that are Signs For those who reflect.*”<sup>31</sup>

The Muslim jurists have considered the exact meaning of marriage. however, they recognized the main goal is to legalize sexual intercourse (*qadhā al-shahwa*), but according to al-Sarkhasi in his book, *al-Mabsūt* the contract is not only the fulfillment of this interest

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<sup>29</sup> Muslim jurists have different opinions on the meaning of the word nikah in Arabic. there are three meanings: First, some argue that nikāh is interpreted as haqīqa, as wat' (sexual intercourse), and kināya, as 'aqd. Second, it holds that haqīqa marriage is 'aqd, and kināya, as wat'. Third, the meaning of marriage both means aqd, and wat' as haqīqa forms, aqd, and wat'. See, Muhammad at-Ṭāhīr, Ibn Ashūr, *At-Tahrīr Wa at-Tanwīr*, vol. II (Tunis: ad-Dār at-Tūnisīyah lil an-Nasr, 1984), 359.

<sup>30</sup> the Qur'anic verse. al-Ahzab, 33:7

<sup>31</sup> Ali Yusuf translation, Q. 30-21

but what is meant is significantly to gain benefits to maintaining offspring of humankind.<sup>32</sup> But God ties the completion of the *shahwa* to this agreement as well, with the intention that the pious Muslim will consider how he perform this marriage in light of religious principles, while the disobedient Muslim just enters into this marriage out of lust. Its due the diverse definition of marriage in fiqh discourse, however, I conclude with this definition stating that marriage (*nikāh*) in Islam is, "a contract that legalizes sexual intercourse relations between a man and a woman, a cooperative relationship between both the spouse and the limitation of rights and obligations over both."<sup>33</sup>

One of the most reputable Hanafi writers, al-Marghinani, writes in the opening of one of his books, "For us as Hanafīs, marriage is possession by means of enjoying sexual pleasure within a person, and this right is established by marriage."<sup>34</sup> A Maliki jurist named Khalil b. Ishaq emphasized the fact that such a contract, known as *'aqd al-nikāh*, permits the husband to use his wife's body.<sup>35</sup> Marriage is regarded as a type of contractual ownership that results in interdependent gender-based rights and obligations. This dispute over claims does not reflect the equality of husband and wife.

A man has more rights to conduct a kind of divorce, polygamy, and marital conflict resolution.<sup>36</sup> The right of the husband over his wife especially his sexual organs (*farj*, *bud'*) is obtained in lieu of dowry (*mahr*). Other aspects of marital relations such as good treatment (*husn al-Isra*), affection (*mawada*), mercy, compassion, harmony, and other ethical values must be considered by both parties to achieve a good conjugal life.

Historically speaking, there was no restriction on a man's right to marry or even freely divorce his wife at any time during the so-called *al-Jāhiliyya* period (the period of ignorance) in Arabia. As a result, when Islam entered Arab society in particular and other society in general, which is governed by Islamic law, it was decided to limit men to four wives at a time, based on the verse (Q. 4:3). An improved version of an instinctive marriage is one in which the woman is slightly attracted to the couple. For instance, a dowry (*mahr*), which was once acknowledged by Islam as a dowry provided to her father, was altered by Islam so that it is now given to a woman as a bridal present as part of her rights.<sup>37</sup> Moreover,

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<sup>32</sup> Muhammad ibn Ahmad al-Sarkhasi, *Al-Mabsūt* (Beirut: Dār al-nāshir, n.d.), 192.

<sup>33</sup> Abu Zahrah, *Ahwal Syakhsyah*, 2nd ed., vol. I (Cairo: Dar al-Fikir, 1999), 19.

<sup>34</sup> Burhanuddin Al-Marghinani, *Al-Hidayah: Sharh Bidayat al-Mubtadi*, vol. 4 (Cairo: Dār Salam, 2000), 460.

<sup>35</sup> Khalīl bin Ishaq, *Mukhtasar Khalīl* (Cairo: Dār al-Hadith, 2005), 96.

<sup>36</sup> Kecia Ali, *Marriage and Slavery in Early Islam* (Harvard University Press, 2010).

<sup>37</sup> Majid Khaduri, "Marriage in Islamic Law: The Modernist Viewpoint," *The American Journal of Comparative Law* 26 (1978): 213–18.

under Islamic law marriage is no longer deemed as a "status" but rather as a "contract or ('*aqd*)". It is important to note in the Islamic tradition that one of the obliged mechanisms of the marriage contract is the offer by the guardian of her bride's father, the so-called '*ijāb*, and given to acceptance by a groom, namely *qabūl* and also the groom gives the bride such dowry. Furthermore, this condition of the offer and acceptance timing must be required the presence of at least two witnesses.<sup>38</sup>

Additionally, marriage in Islam is not only part of the worldly purpose but beyond that, it is recognized by jurists as part of the hereafter oriented. Marriage is meant to perform a kind of submission to God, to adhere to the guidance of the Prophet as following his *sunnah*, and to maintain, care for, and keep his children as given by God, and another thing considered important in Islamic tradition that marriage is to keep his eyes from the *fitna* of the women which would be able to do the prohibited action in Islam.<sup>39</sup> However, these all things if the Muslim has a kind of intention for the obedience of God, then it will be rewarded or appreciated.

### 2.3 Purpose of Marriage in Islam

Marriage is established as a pillar of the family form where the rights and duties between spouses meet. Based on Islamic teachings marriage creates a sacred bond in Islam that emphasizes its humanity, which is different from animal nature which is based on mere *shahwa* without doing so tightly with this sacred bond. In Islam, sexual desire can only be fulfilled by having a legal marriage. Thus, the purpose of marriage in Islam other than to legalize sexual relations is undeniably part of human nature (*fiṭra*). Marriage is a natural necessity for every human being. It contains many good results the most important of which are:<sup>40</sup>

- The establishment of a family, which provides stability and comfort.
- There is a strong and significant natural sexual urge. Everyone needs a partner to fulfill their sexual demands in a private, secure setting.
- Reproduction: Humanity continues to reproduce through marriage. Marriage produces children, who play a significant role in securing the family's foundation and bringing their parent's genuine delight.

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<sup>38</sup> These are prerequisites of marriage in Islam.

<sup>39</sup> Abu Zakariya Muhyiddin Al-Nawawi, *Fatāwa Al-Imām al-Nawawi Bil Masā'il al-Mantsura* (Beirut: Dār al-Bashāir al-Islāmiyya, 1996), 179.

<sup>40</sup> Ayatullah Ibrahim Amini, *Principles of Marriage Family Ethics* (Lulu Press, Inc, 2014), 1.

- The Qur‘ān and *hadith* for getting married and having kids have received a lot of attention. In the Qur'an, God reveals in Q. 30:21, "And one of His signs is that He made for you a mate from among yourselves."
- The Prophet declared: 'Whoever marries, has kept the things of his religion.'

However, God mentions expressly in the Qur‘ān that the goal of marriage is also to provide a comfortable environment for the couple Q.30:21, that this comfort and placing affection between the couple, can then be a lesson for the thinking person. In addition, marriage is to preserve the human species and the survival of mankind. This is in line with the Qur‘ān, Q. 4:1, which states that: "*O mankind! honor your Lord your Protector who created you from one person created like the nature of his companion and from them scattered (like a seed) countless men and women; honor God by whom you demand (the right) and (honor) of your womb (which gave birth to you): for God always looks after you.*"

Additionally, Islam provides a spiritual foundation and harmony of family relationships in a certain unity, a husband is considered the head of the family according to Q. 3:34. He is responsible for providing care to his wife and children. More than that, he was also responsible for treating them well and providing religious and worldly education to the children. On the wife's part, she must be faithful to her husband and be the best to provide for her children, while this kind of relationship in the family group is established in verse. As for children, they should obey their parents and respect them, even though they are not allowed to speak harshly to their parents as mentioned in the Qur'an, verse Q. 17:23, "*Whether one or both of them reach old age in your life, do not say to them words of insult, or drive them away, but address them in terms of honor.*"

## 2.4 What is the *hukm* of Marriage among Jurists?

Regarding the *hukm* or a juridical decision, there is disagreement among jurists. Marriage is essentially permitted (Mubāh) if we take the majority of the Shafī'i madhhab into consideration. On the other hand, the Hanafīs, Malikis, and Hanbalis hold that it is Sunnah to adhere to the legal principle of marriage (*al-ashlu fi al-hukm*).<sup>41</sup> On the other hand, the Dzahiris Madhhab maintains that the law of marriage is obligatory (wājib). In other words, marriage is a must for everyone at some point in their lives. However, those Muslim jurists concurred that this preliminary decision can vary depending on the person's

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<sup>41</sup> Abdurrahmān al-Jazīrī, *Al-Fiqh 'ala Mādhib al-'Arba'a*, Second Edition (Lebanon: Dār al-Kutub al-'ilmiyya, 2003), 10.

situation and circumstances. The following are some different legal perspectives on marriage depending on the circumstance:

There is a difference of opinion among jurists with regard to the principle of *hukm* or a juridical decision. If we refer to the majority of the Shafi'is *madhhab*, marriage is basically permissible (*Mubāh*). In contrast, the Hanafis, the Malikis, and the Hanbalis jurists hold that the original legal ruling of marriage (*al-ashlu fi al-hukm*) is recommended (or *Sunnah*). However, on the other hand, according to the Dzahiris Madhhab, the law of marriage is mandatory (*wājib*). In other words, everyone must get married at least once in a lifetime. However, those Muslim jurists agreed that this preliminary ruling may change according to the circumstances and conditions of the person. The following are some legal opinions on marriage that vary according to the situation:<sup>42</sup>

- In cases where a person has the financial means to do so and also sincerely feels that absent marriage, and he will commit adultery (or *zinā*), marriage for this person is mandatory (*wājib*).
- Getting married is advised for people who plan to wed their future brides. On the other hand, he is still capable of controlling his sexual cravings (*sunna*).
- When a person is unable to get married or fulfill his marital duty to have sex with his future bride, marriage is reprehensible (*makrūh*).
- When a person is under financial strain and unable to support his future bride, in addition to being unable to meet his marital obligations, marriage is prohibited (*harām*).
- Marriage is permissible in situations where the person has no barriers preventing him from marrying and at the same time there is no urge to require him to marry (*mubāh*).

## 2.5 Interfaith Marriage in the Perspectives of Classical Muslim Scholars

I would categorize interfaith marriage into two groups. The first involves a Muslim man being married to a woman who is not Muslim. The second is the marriage of a Muslim woman and a non-Muslim husband. Depending on who is considered to be a non-Muslim woman, the first category—a Muslim man and a non-Muslim woman—can be either legitimate or invalid. the Banu Isrā'il, Jews (*Yahūd*), Christians (*nasārā*), Zoroastrians (*majūs*), Sabis, and polytheists who worship other gods besides God (or *mushrik*). These non-Muslim groups are mentioned in the Qur'an. In a broader sense, this category can

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<sup>42</sup> al-Jazīrī, 11–15.

include unbelievers (*kuffār*, sg. *Kāfir*), scriptural people (*ahl al-kitāb*), those who are protected (*ahl al-dhimma* or *dhimmi*), and non-Muslims who reside in regions governed by infidels (*ahl al-harb* or *harbis*<sup>43</sup>).<sup>44</sup> According to the consensus of Muslim scholars, it is generally forbidden for a Muslim man to marry a non-Muslim woman who is classified as a polytheist (or *mushrik*), as mentioned in the Qur'anic verse Q. 2:221, which forbids interfaith marriage with *mushrik* women. However, as indicated in the Qur'anic verse Q. 5:5, it is lawful for a Muslim man to marry a non-Muslim lady as a scriptural woman. The second category, on the other hand, concerns the hukm of a Muslim lady's wedding to a non-Muslim man, which according to Islamic scholars is forbidden by the Qur'anic verse Q. 60:10.

#### *An Interpretation on the Qur'ān: Verse, 2:221*

The Qur'ān deals with the problem of interfaith marriage in the three verses which later becomes the major reason for Muslim scholars to establish a basis for the development of Islamic law concerning the issue. The first verse is Q. 2:221 which clearly prohibits Muslims whether man or woman from getting married to a polytheistic (*mushrik*) person. The second verse is Q. 5:5 which provides an opportunity for the Muslim man to wed 'virtuous (*afifa*)' or free (*al-hurr*)' a scriptuary woman and uses the term '*kawafir*' (infidels) rather than *mushrik* (*polytheists or idolators*). Thus, in the third verse, Q. 60:10, numerous commentators in their interpretations believe within this verse constructing the idea that the marriage of Muslim women to non-Muslims is impermissible.

The above verses are considered as the Medina verse (*sūra madaniyya*) that first came down and carry a special message that Muslims should not marry polytheists or vice versa. Fakhruddin al-Razi (d. 1210) in his *Tafsir* book, *Mafātih al-Ghayb* describes these verses are preliminary verses that explicitly explain things that are lawful (*ma yuhallu*) and things that are forbidden (*ma yuhramu*).<sup>45</sup> And, marrying a polytheist is one of God's commandments in Islam's prohibited category.

Indeed, the Q.S. 2:221 literally concludes that marrying a non-Muslim is *harām*. This view is because some Muslims still think that those who fall into the category of polytheism are non-Muslims, including Christians and Jews. But the question that needs to be raised is whether non-Muslims or Christians and Jews are considered into the category

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<sup>43</sup> A Non-Muslim who is a citizen of a country which does not have an agreement with the Islamic State

<sup>44</sup> See detail categories, Friedmann, Y. (2003). *Tolerance and coercion in Islam: interfaith relations in the Muslim tradition*. Cambridge University Press. Chapter Two, P. 2

<sup>45</sup> Fakhruddin Al-Razi, *Mafatih Al-Ghayb*, vol. 6 (Beirut: Dār Ihyā at-Turath al-Arabi, 1999), 407.

of polytheists. If not, then what is meant by '*mushrik*' in the Qur'ān? Some Muslim scholars, as mentioned by al-Razi in his book, explain the ambiguous verses regarding the issue of the word '*mushrik*' that some verses in the Qur'ān refer to Christians and Jews as polytheists. The category of polytheism regarded by both religions is because Jews consider Uzair as the son of God, while Christians consider 'Isa al-Masih as the son of God, al-Razi further mentioned such the *hadith* explaining that the Prophet has instructed one of his governors when meeting with a number of "polytheists" people to invite them to convert to Islam. If they want to convert to Islam, then accept it. If not, then tell them to pay tax (*jizya*) and sign a *dhimma* contract.<sup>46</sup>

However, another verse in the Qur'ān is said to be another view of *mushrik*. the Qur'ān carefully and clearly distinguishes the notions of polytheists and *Ahl al-kitāb* people. In the Qur'ānic verse, Q.S. 2:105, it is said: "*It is never the wish of those without faith among the people of the Book nor of the Pagans that anything good should come down to you from your lord. But God will choose for His special Mercy whom He will for God is Lord of grace abounding.*"

And Q.S 98:1, another verse God also states: "*Those who reject (Truth) among the people of the book, and among the polytheists, were not going to depart (from their ways) until There should come to them clear evidence.*"

The above two verses, explain the term infidel (or *kāfir* pl. *kuffār*) of two kinds. First, the scriptuary people (*ahl al-kitāb*); and second, the polytheists (*mushriks*). The term used by the Qur'ān for the same substance, namely *kufr* with two different names, namely *ahl al-Kitāb* and *al-mushrikūn*. Otherwise, this difference in the two words is important to be noted in order to classify the non-Muslim category as well. For instance, in the 10th century, the existing Sunni scholar, Abu Ja'far Muhammad b. Jarir al-Thabari (d. 310 A.H.), has stated that some commentators understand Q. 5:5 as the previous verse forbidding interfaith marriage between a Muslim man and scriptuary woman in Q. 2:221 mentioning "*do not marry an unbelieving woman (polytheistic) before they believe*".<sup>47</sup> al-Thabari as one of the prominent scholars interpreted 'unbelieving woman' or '*mushrikah*' as people who are not categorized as *ahl al-kitāb*. A *Mushrik* referred to in Q. 2:221 is not at all Christian and Jewish. But what is meant by "*Mushrik*" in the verse is Arab polytheists who do not have a holy book.

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<sup>46</sup> Al-Razi, 6:409.

<sup>47</sup> Abu Ja'far Al-Thabari, *Jāmi' al-Bayān Fii Ta'wīl al-Qur'ān* (Muasassa ar-Risala, 2000), 362.

*An Interpretation on the Qur'ān: Verse, 5:5*

While in the Qur'ān 5:5, Muslim scholars who understand the meaning of *mushrik* associated with *Ahl al-kitāb*, argue that this verse, Q.5:5 was abrogated by verse Q. 2:221, which means the Muslim man is not allowed to wed the *Ahl al-kitāb* woman, this view is unacceptable. It is due to the verse of al-Baqarah above being revealed earlier than the verse of al-Maidah. Then, it is not logically acceptable if the earlier verse can abrogate the latest one. In addition, it is important to note that many narrations and the history of the Prophet's companions recognize that a number of companions have to do interfaith marriage, such as Khalifah Utsman b. Affan married a Christian woman, and even later his wife embraced Islam, and the two famous companions in conducting such marriage are Thalhah dan Zubair marrying the two Jews women.

Al-Thabari concentrates on the meaning of *muhsanāt*, and instead of understanding it to refer to "virtuous/holy woman," he interprets the phrase to refer to "free woman" (as opposed to slave girls). Al-Tabari contends that the essential need for Muslim women to be considered genuine is that they are free, with minimal emphasis placed on their virtue or chastity. While Muslims could also wed Muslim slave women, this would only apply to scriptural ladies. Thus, by getting married to a woman who follows the Bible, a Muslim man can help "remind" her of the truths of Islamic teachings, present Islam to her, and encourage her to accept Islam, as is said to be the result of what al-Kasani thinks is a justification for the Muslim man being given to this interfaith union. Al-Kāsānī held that an interfaith union with a polytheistic woman, whose decision to stay would not be taken into consideration if offered to him, merely would not be possible.<sup>48</sup>

Al-Thabari asserted that the opinion that "it is not lawful to marry an adulterous woman from among Muslims and the People of the Book for male Muslims," violates the views of the majority of scholars who opposed such an opinion. Al-Thabari thus mentioned, marrying a free woman of Islam and the People of the Book, it is lawful for Muslim men, whether they have committed adultery or not to commit adultery, *dhimmi* or *harbi*, provided that there is no concern for the marrying of the child who will be forced to disbelieve, according to Q. 5:5. "(and it is lawful to marry) women who keep honor among women of faith and women who keep honor among those who were given the book before you." Al-Thabari, address the opinion that states it refers exclusively to women People from the Sons of Israel (or *banī Israel*), is an opinion that does not need to be explained

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<sup>48</sup> Abu Ishaq ibn Masud al-Kāsānī, *Badāi' Al-Sanā'i Fi Tartīb al-Sharā'i'* (Dār al-Kutub al-'Ilmiyya, 1986), 270.

because it contradicts the opinion of the majority of scholars about the lawfulness of Jewish and Christian women.

According to al-Kāsānī, he asserts that the *Ahl al-Kitāb* is categorized in general terms as polytheistic in Q. 2:221 and that verse Q. 5:5 is clearly mentioned the participation of general terms that suggest an interfaith marriage between Muslim men and scriptuary women is permitted. al-Kāsānī used the same verse that he stated as not covering the *Ahl al-Kitāb* to support the asymmetrical prohibition of marriage between Muslim women and non-Muslim men Q. 2:221: "And do not marry polytheistic men (with women) until they have believed." Moreover, he acknowledges this by explaining that although Q. 2:221 regarding polytheist people, the cause/reason behind the prohibition, is "they invite (you) to hell (*'ulaika yadhūna 'ilā nār*)." this statement seems to include every sect of the categories of the non-Muslim people, then the prohibition also refers to scriptuary people. In this regard, in terms of classifying unbelievers.<sup>49</sup> Among the early traditionalists, Qatāda b. Di'ama, Sa'īd b. Jubayr, al-Hasan al-Basri, Ibrāhīm, al-Nakha'i, and Amīr al-sha'bi are mentioned as understanding polytheism in Q. 2:221 referring to women's Arab polytheistic.

al-Muqātil's commentaries also support this understanding, and later it becomes a common interpretation of the verse.<sup>50</sup> The use of the Qur'ān, which regards scriptuary woman as a distinct category that refers only to Arab women polytheistic, otherwise nothing to do with interpreting Q. 2:221 in this restrictive way, it has still existed that permissibility of the marriage between a Muslim man and Jewish or Christian women is due to Q. 5:5 and the *hadith* of the Prophet arguing: "We marry scriptural women, but they do not marry our women (Muslims)." (*Natazawwaju nisa'ā ahl al-kitāb wa lā yatazawajūna nisa'anā*).<sup>51</sup>

A Muslim jurist from the Hanafī madhhab, Abu Bakr al-Jasās (d. 370 H) stated that the prohibition against marrying a scriptural woman was not punished as prohibited, but only disfavored. This is evidenced by the marriage of several companions with the people of the book, such as Uthman paired with a Christian woman, Talha b. Ubaydilla married a Jewish woman from the Levant. While from among the successors (tābi'ūn) such as al-Hasan, Ibrahim, and Sha'bi. It should be noted, according to al-Jāsas asserts that Umar's recourse to the Companions of the Prophet who married a scriptural woman did not indicate

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<sup>49</sup> al-Kāsānī, 271.

<sup>50</sup> Abu al-Hasan Muqātil ibn Sulayman, *Tafsīr Muqātil ibn Sulayman* (Beirut: Dār Ihyā at-Turath, 2002), 190–92.

<sup>51</sup> Abu Bakr al-Baihaqi Ahmad, *As-Sunan al-Kubrā*, vol. VII, n.d., 172. Al-Thabari, *Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, 367.

prohibition (harām) but only dislikes one (makrūh). For, if such a marriage is considered absolutely harām, then there will appear among friends who oppose dissent in this case, but in reality, there are no friends who oppose it, then it shows their agreement on the permissibility of marrying a scriptural woman.<sup>52</sup>

Behind this ban on Muslim marriage with non-Muslim women. Al-Jasās mentions that some scholars are of the opinion that their 'invitation' mentioned in the Qur'ān is not a *'illa* (cause) for the prohibition of marriage because, from the beginning of Islam, such marriages were performed by some of the Prophet's companions until the passage of the verse forbidding marrying a polytheistic woman on the assumption that the *kāfir's* communities (it be non-Muslim groups) call to Muslims went into hellfire. therefore, this basic assumption is not an *'illa* for the prohibition of such marriage. in this verse, it is proved that the wives of Nuh and Luth were pagan women, Q. 66:10. This event confirms the validity of their marriage even though their wives are in a state of *kufir*. As a result, according to al-Jasās that form of *kufir* is not a *'illa* for the prohibition of interfaith marriage in the case of Muslim men with non-Muslim women. However, the Qur'ān commentators mention the prohibition against marrying Muslim women because they invite people to the 'abyss' of hellfire.<sup>53</sup>

According to Ibn 'Āshūr, in his *tafsir* book namely At-Tahrīr wa al-Tanwīr, regarding verse, 5:5, argues that the majority of scholars state that it is permissible for a Muslim to marry a scriptural woman, not polytheistic, Majūs or Sabīn (or Zoroaster). in this case, he mentioned it is because of the four imams (*aimma madhahīb*), al-awza'i, and at-thawrī that the marriage of a Muslim man with a scriptural woman remains permitted by all Muslims either on the basis of Sunnah statements, analogical view or *qiyās*, or referring to the consensus of scholars and this is more acceptable (or *aḥzar*).<sup>54</sup>

Meanwhile, a few parties of Muslim scholars argue in another way or opinion, which these parties considered the scriptural people to be polytheistic, it is due to their statements saying that the Jews recognized that Uzair is the son of God and the Christians believe that Jesus is the son of God, since Abdullah b. Umar's argument is mentioned in the book of al-Muwata, saying;

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<sup>52</sup> Abu Bakr al-Rāzi al-Jāsas, *Ahkām Al-Qur'ān*, vol. II (Beirut: Dār Ihyā at-Turath al-Arabi, 1984), 15–17.

<sup>53</sup> al-Jāsas, Vol II:18–19.

<sup>54</sup> Ibn 'Āshūr, p. 360, *Tafsir Ali Shabuni, Rawai' al-Bayan Tafsir verse al-Ahkam*, Maktaba al-Ghazali, Damascus, Muassasah Manahil al-'Irfan, (Beirut: 1980)

*"God has forbidden believers to marry married women to fellowship Him in worship (performing shirk), and I do not know a greater shirk<sup>55</sup> than a woman says, Jesus ('Isa) is her God".*

Ibn Abbas agrees, based on several narrations, to affirm the prohibition. There are two reasons for Ibn Umar and Ibn Abbas's positions. First, both appeal to the distrust of classical scholars based on their assumptions of the existence of the association of partners with God. Second, both consider Q 5:5, which gives permission for men to marry Jews and Christian women, considering Q. 2:221, which forbids intermarriage with polytheists. While this view which does not allow Muslim men to marry non-Muslim women is known a few opinions that contradict a number of Muslim scholars' views. Accordingly, as stated clearly by Ibn 'Ashūr, this issue is considered the consensus (*ijmā'*) of Muslim scholars.

Al-Wāhidī and some commentators assert that Q. 5:5's decline is due to the fact that it was revealed at a time when Muslims were given rights, including the very last, if not the very last, step of revelation. This was allegedly revealed in 10 A.H./632 A.D., during the Prophet's final pilgrimage (hajj al-wada'). If this conventional calendar is accepted, then the Prophet's decree of the Jews' expulsion from Medina and the victory of Khaybar were followed by the freedom to marry Jewish and Christian women.<sup>56</sup> If we see the commentators of verse Q. 5:5 we will find the majority of Muslim jurists' perspectives that permission to marry a *kitābī* woman is a symbol of the superiority of man to woman. It is basically their understanding rooted in verse Q.4:34.

Whereas in the context of verse 6:10, which is used by scholars as a postulate not allowing Muslim women to marry non-Muslim men, this verse relates to the provisions of the hudaibiyya agreement according to which Muslims are obliged to return to Meccans who immigrate to join the Muslim community to Medina, and this verse revokes this agreement as far as women convert are concerned. In addition, he instructed Muslims to sever marital ties with pagan women whom they might have left in Mecca when they embraced Islam and immigrated to Medina.<sup>57</sup> In response to this verse, Umar b. Al-Khattab

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<sup>55</sup> It is literally "association" or "polytheism," "a sin that cannot be forgiven. Islam emphasizes a strict monotheism that does not accept "giving partners to God". as Q. 4:116 mentioned that "Allah forgiveth not (the sin of) joining other gods with him, but he forgiveth whom He pleaseth other sins than this; one who joins other gods with Allah, hath strayed far, far away (from the right)".

<sup>56</sup> Abu al-Hasan Ahmad al-Wāhidī, *Asbāb Nuzūl Al-Qur'ān*, Tab'a al-'ula (Beirut: Dār al-Kutub al-'Ilmiyya, 1991), 74.

<sup>57</sup> Muhammad Ibn 'Umar al-Waqidī, *Al-Maghāzi*, Tab'a Tsalisa, vol. II (Beirut: Dār al-a'lami, 1989), P. 637.

is said to have divorced two wives he had in Mecca.<sup>58</sup> The prohibition of marriage with idolaters became an important and indisputable element in Islamic family law.

Therefore, it might be stated that the prohibition of Muslim women getting married to people of other faiths in traditional Islamic literature is founded specifically on the consensus of Muslim jurists (or *ijma'*).<sup>59</sup> This legal ruling's foundation is found in the Qur'anic normative of *qiwwāma*, which is found in Q. 4:34. This includes prohibiting Muslim women from getting married to non-Muslim men who are viewed as male maintainers to women. Thus, it is possible to draw the following conclusion from a key verse in the ancient Islamic tradition of interfaith marriage in Islam: "Interfaith marriage is forbidden, except in the case of a Muslim man marrying a scriptural woman." However, many traditional Qur'anic exegetes hold—as do most scholars, Sunni and Shia—that Muslim males who marry scriptural women are permitted to enter into interfaith marriage. This viewpoint seems to combine the exclusion of permissible marriage with biblical women according to Q. 5:5 with the restriction of interfaith marriage according to Q. 2:221.

## 2.6 Interfaith Marriage and *Fiqh*: The Classification of *Dār al-Islam* and *Dār al-Harb*

In reality, the division of the world into the idea of territorial boundary of the land of Islam (or *dār al-Islam*),<sup>60</sup> and the land of the war (*dār al-harb*) has actually been a matter of contestation throughout Islamic history.<sup>61</sup> Although, it is important to note that the Qur'an and the accepted traditions attributed to the Prophet (*hadith*) do not clearly define any region as *Dar al-Islam* or *Dar al-Harb*. Contemporary Muslim scholars agree that medieval Muslim scholars were the source of such differences through their own interpretations of the Qur'ān and *hadith*.<sup>62</sup> The word *dar* literally means house, building, locality, residence,

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<sup>58</sup> Al-Thabari, *Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, 366.

<sup>59</sup> Ibn 'Ashūr, *At-Tahrīr Wa at-Tanwīr*, II:360.

<sup>60</sup> There are some Muslim scholars who disagree with this division in the contemporary or modern age, such as Wahbah Zuhayli (d. 2015) and Abu Zahrah (d. 1974), they prefer to make a third category of the concept of *dār* which is *Dār al-Ahd*, or *al-MuwāfDPRhada* (abode of peace). as Wahbah states that "the division of the world into *dar al-Islam* and *dār al-Harb* is not a commandment of Islam." Accordingly, Muslim scholars created its definition based on the religious and political conditions that existed in their times. He argues that conditions have changed, and international relations are able to achieve peace. he then says that a country becomes *dār al-Harb* if it is in a state of war. But if the war ends, the country is no longer a *dār al-Harb* but *dār al-'ahd*. See, more discussion on his book, entitled Mustafa Wahbah Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami*, (Beirut, 1966). P. 130-138.

<sup>61</sup> Sarah Albrecht, *Dār Al-Islām Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West*, vol. 29 (Brill, 2018), 1.

<sup>62</sup> See, Zuhayli, Mustafa Wahbah, *Athar al-Harb Fi al-Fiqh al-Islami*, P. 135 Beirut, 1966.

area, land, or country.<sup>63</sup> Legally speaking, it denotes "a state ruled by a Muslim or non-Muslim ruler." According to this definition, the ruler's position is a defining characteristic of this notion. Muslim scholars have disagreed on how to apply Islamic law in this classification of the Islamic world; one of the hotly contested issues is the marriage of non-Muslim women.

As the Islamic legal tradition, only those who assault Muslims first are considered to be violating the Shari'a, at least as it is written in Q. 2:192–193. It states unequivocally that only the " *ẓhalīmīn* " are opposed to Islam. However, when it comes to interactions with the ahl al-kitāb communities, it is stated in Islamic legal tradition that members of the ahl al-dhimma receive rights to protection, property ownership, business transactions, the ability to marry both Jews and Christians, the ability to pass down their heirs, and the ability to seek judgment (or qadhā) from Muslims.<sup>64</sup> In fact, they are still allowed to drink *khamr*, and eat pork because it is based on their covenant to the Muslims.

The topic of interfaith marriage between Muslims and non-Muslims, however, is one of the most important issues with the legal regulations governing the connection between Muslims and non-Muslims. The Qur'anic verses, which were cited previously in the previous section, such as 2:221, demonstrate that Muslim males are prohibited from marrying Muslim women and polytheistic women under any circumstances unless they have converted to Islam. The majority of Muslim jurists argue that it is acceptable for a Muslim man to wed a scriptural lady based on another verse. When asked about marrying a Christian or Jewish woman, Ibn Umar expressed his opinion, but he also claimed that because polytheism is against the law that God has established for believers, it is the greater *shirk* for a woman to claim Jesus as her Lord when she is only one of God's Prophets.<sup>65</sup> Presently, we are going to examine a different viewpoint that was presented in the illustrious book by al-Jaziri b. Abd ar-Rahman. In his thorough work on comparative studies of differences, he mentioned various viewpoints of jurists addressing the Muslim community's debate on interfaith marriage as follows:

According to Hanafis jurists argue that it is considered forbidden or *harām* to marry a woman who was in the *Dār al-harb*<sup>66</sup> at the time she wanted to be married. It is not

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<sup>63</sup> Hans, Wehr, *Modern Written Arabic Dictionary*, New York, 1971.

<sup>64</sup> Ibid, P. 15

<sup>65</sup> See, *Kitab Sahih al-Bukhari*, chapter on Divorce, in Sunnah.com, Available at: <https://sunnah.com/bukhari/68/34>

<sup>66</sup> The word *Dār* or *d-r* literally means a house, building, locality, abode, area, land, or country. See, Hans Wehr, *A Dictionary of Modern Written Arabi*, New York, 1971. In legal terms, it means "a

applying the rules of the Shari‘a that can affect the cause of the *fiṭna* (temptations). And the reason is that marriage has the potential to lead to a deterioration of morality and behavior based on the Shari‘a teachings. Therefore, it should be noted that in this view even the marriage contract is valid,<sup>67</sup> however, the act is considered undesirable or reprehensible (*makrūh tahrīman*) if this is done with the *kitābī* of women in the territory of Islam (*dār al-Islam*). Meanwhile, it is contrary to the behavior of a *kitābī* woman who becomes a dhimmi woman or lives in the land of war (*dār al-harb*) where the Shari‘a rules are enforced by society.

In contrast, Maliki's jurists hold two views: First, the view of marrying a biblical woman, really whether being a *dhimmi* or *harbi* is considered a forbidden marriage. Secondly, they viewed it as not included as *makrūh*, because the text of the Qur‘ān allows such marriages, and in fact, there is no classification of the *kitābī* people from the book (*Ahl al-kitāb*). The views of Maliki jurists are very similar to those of Hanafi jurists, due to the framework of moral aspects. In addition, these views also rest on the principle of *sadd al-dharā‘i*‘ (blocking the way), which means that interfaith marriage contracts are carried out by couples of different religions, resulting in moral destabilization based on Islamic teachings so that marriage is prohibited or *harām*. Nevertheless, Maliki's view disputed by other scholars is that prohibition cannot be applied as long as there is a clear text of Shari‘a. On the other hand, Qur‘ān verse 5:5 clearly mentions the permissibility of a Muslim man to marry a scriptuary woman.

The three schools of Islamic legal thought, where are prominent scholars including scholars who codify Islamic legal theory or *ushūl al-fiqh*, Shafi‘i, the eponymous Shafi‘i school (d. 150), some of whose adherent view such marriage as *makrūh* or disfavored as Maliki jurists' views. While, these jurists consider this *hukm* or a legally binding decision depending on the specific time or circumstances, as follows here: First, Muslim men are not interested in the Islamization of their potential spouses. Secondly, whenever he finds a Muslim woman who suits him. Third, on condition that a Muslim man commits adultery

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country which is under the control of a Muslim or non-Muslim ruler.” See, Mawardi, Ali B. Muhammad (d. 450/1058), *al-Ahkām al-Sulthaniyah wa al-Wiyāt al-Diniyah*, (1978). P. 66

<sup>67</sup> See, al-mabsut, al-Sarakhsi, The reason he took the view of makruh marrying an *Ahl al-harb* woman was based on the statement of Ali b. Abi Thālib was asked about marrying the *Ahl al-harb* woman, then he considered *makrūh* about it. In fact, according to al-Sarakhsi, the marriage of a Muslim with an ahl al-Harb woman, if the Muslim man leaves the *dār al-Harb* out to *dār al-Islam*, then the act is considered to break the marriage relationship. Because of the different places where the couple lives, they make the termination of their marital relationship. This view is used in the Hanafis *madhhab* (or in other words *mūjibun lilfirqoh ‘indanā*). See, al-Mabsut, Vol. V, p. 50.

with a *kitābī* woman. Thus, it is advisable to marry her even though he is not interested in making her convert to Islam as well as having a suitable Muslim woman.<sup>68</sup> It should be underlined that the views of Shafi's jurists basically rest on the concept of *masāliḥ* (public interest). As an illustration, if the terms of marriage are based on the *maslahah* to maintain Islamic norms, then this marriage is acceptable. However, on the contrary, if the marriage falls under the form of *mafsadah* (or public corruption), then this marriage is unlawful.

Another view of Muslim jurists, namely the Hanbalists has a different opinion from others, namely that there is no *makrūh* understanding of marriage. In other words, these scholars argue for allowing a Muslim man to marry a *kitābī* woman, regardless of the various disfavored elements (*makrūh*). This is totally permissible because the text of the Qur'ān is clear with its general meaning about the permissibility of such marriages.

In order to make an easier understanding to know the jurist' perspectives on Interfaith marriage, here I would like to summarize these juristic opinions regarding the permissibility of interfaith marriage in a comprehensive way:

Jurists	Opinion
<ul style="list-style-type: none"> <li>Hanafis madhhab</li> </ul>	<ul style="list-style-type: none"> <li>It is prohibited to marry a scriptuary woman if she marries her in <i>dar al-harb</i> which does not apply to Islamic shari'a law. The reason is that it can cause slander, can cause moral decay, to educate morals that are not in accordance with Islamic teachings</li> </ul>
<ul style="list-style-type: none"> <li>Malikis madhhab</li> </ul>	<ul style="list-style-type: none"> <li>There are two views in the Malikis school. 1. The view of marrying a scriptuary woman is absolutely <i>makrūh</i>, whether it is done in <i>dār al-Islam</i> or in <i>dar al-harbi</i> which is certainly higher in the degree of prohibition (or <i>harām</i>), 2. The view that allowing interfaith marriage to be permissible is absolutely not an element of plurality</li> </ul>

<sup>68</sup> The perspectives of Shafi'i scholars, on the *dār al-Islam* concept are reflected in three types; (1) Land where Muslims live, (2) land which is conquered by a Muslim army and left to non-Muslims in return for the *jizya* (or poll tax), (3) land that was under the control of Muslims but was later conquered by non-Muslims. For more details, see Ibn Hajar al-Haytami, Ahmad (d. 973/1565), *Tuhfah al-Muhtaj bi Sharh al-Minhāj*, Vol. V1, P. 350. In addition, the concept of the Dār al-Harb, according to them describes the *dār al-harb* as lands that are under the control of a non-Muslim ruler who is not obliged to give *jizya* to the Muslims and has never been under the control of Islam. See, a more detailed explanation of this division of the world, in the works of Ibn Hajar al-Haytami, Vol. IX, P. 269 (Beirut: Dār Ihya Turath al-Arabi) 1983. And also the book of Zaydan, Abdul al-Karīm, *Ahkām al-Dhimmiyyin wa al-Musta'minin fi dār al-Islam*, P. 19 (Beirut: Muasassah Risāla), 1982

	because it is clear in the Qur‘ān that marrying a scriptuary woman is permissible.
<ul style="list-style-type: none"> <li>• Syafi’is madhhab</li> </ul>	<ul style="list-style-type: none"> <li>• This <i>madhhab</i>’s view is more or less the same as that of Maliki scholars, Hanafist scholars who argue that interfaith marriage is legal <i>makrūh</i>. However, Shafi’i scholars add other rules that can change the element of marriage maturity. 1. A Muslim man who wants to marry a scriptuary woman has no motive to convert his future wife, 2. Muslim men have already found Muslim women who match their desires, 3. Under certain conditions, if Muslim men would do adultery with a scriptuary woman. So, in such conditions, it is allowed to marry such a scriptuary woman, despite having no motive to convert and having also found a suitable Muslim woman.</li> </ul>
<ul style="list-style-type: none"> <li>• Hanbali madhhab</li> </ul>	<ul style="list-style-type: none"> <li>• This view is slightly different from other scholars which argue that interfaith marriage does not have an element of absolute plurality. The reason is that <i>the nash syar’i</i> clearly declared the permissibility of the marriage.</li> </ul>

According to Islamic law marrying a scriptural woman (Christian and Jewish Woman) is normally permissible. However, some Muslim scholars hold that interfaith marriage while living in *Dar al-Harb* is disfavored. They believe that interfaith marriage in the *Dār al-harb* has some shortcomings, such as cultural assimilation especially since it affects children.<sup>69</sup> Since the division territorial boundary (or the *dār*) may affect the marriage, it has been discussed by Hanafi scholars, who argue that if one of the spouses migrates to the *dar al-Islam* from the *Dār al-Harb* as a *dhimmi*<sup>70</sup> or as a *musta‘man*<sup>71</sup> and later becomes a *dhimmi* or converts to Islam, that divorce is imminent. On this point, Shafi’i agrees with the Hanafi scholars.<sup>72</sup> However, other Shafi’i, Hanbali, and Maliki scholars say that separation is not based on physical territory but because of the changing of religion. On the other hand, Muslim scholars have discussed the concept of the *Dār* since

<sup>69</sup> Abu Zayd Abdullah Ibn Umar Dabusi, *Tasis al-Nazar*, 58-59

<sup>70</sup> “A Non-Muslim who is the covenant of protection (*dhimma*) with the Muslim state and has the right of permanent residence in the Muslim land”, Ronald L. Nettler, “Dhimmi”, Oxford Encyclopedia of Modern Islamic World, New York, 1995.

<sup>71</sup> “A non-Muslim who is temporary resident, and who has the assurance of protection in an Islamic state”, Zaydan, 46-56.

<sup>72</sup> Sarakhasyi, Vol. V, 51

the beginning of the eighth century. They established the division in light of their interpretations of the Qur‘ān and the Sunnah in order to distinguish religious demographics.<sup>73</sup> Although they distinguished themselves from each other in their views under the influence of their cultural, political, and social surroundings, the primary concern they repeatedly raised in their non-binding opinions (or fatwas) was applicable to Islamic tradition.

However, it is important to note that the opinion of scholars who hold the view of interfaith marriage is something that a Muslim has affected by a diverse of factors, including can lead to the destabilization of morality based on Islamic teachings. Nevertheless, the element of maturity does not necessarily cause the marriage contract to be invalid or valid. In other words, marriage is still considered valid according to classical literature based on Muslim jurists. As mentioned in the previous section that one of the reasons for the difference in ulama’s opinion is due to the methodological factors used, such as ulama who consider this *makrūh* law to be based on the principle of *mashlaha* (or public interest), and also because of the principle of *sadd dharāi‘* in order to keep the Muslim group maintained Islamic teachings of humankind in general. Thus, from these two principles, interfaith marriage legally becomes discovered or *makrūh* and can even become forbidden or *harām*.

If we compare the opinions of Muslim jurists and the early period of Islam during the formative period of Islamic history, we will find numerous companions, such as Thalha B. Ubaydillah, Sa'ad B. Abi Waqqash, or even Zainab as the Prophet's daughter who before Islam had married Abu al-Ash b. Rabi' before he later converted to Islam, those companions were among those who performed interfaith marriages. In fact, Ibn al-Qayyim explains that the majority of the companions were born from ‘un-Islamic marriages’ or in *kufr*, but no doubt by Islamic scholars the companions remained attached to their fathers so that many companions at the time of the Prophet were not commanded to conduct new marriage contracts.<sup>74</sup>

In detail, the explanation of the historical aspects of this issue is certainly related to social, political, and economic dimensions. However, it must be noted that an *asbāb nuzūl* or "the event of revelation" was revealed to one of the Prophet's companions named

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<sup>73</sup> Ismail Eris, “The Dar Al-Islam and the Dar al-Harb: A Discourse on the Crafting of a Muslim State” (University of Texas at Austin, 2000), 52., and also see the Hanafis school discussion on Muhammad Mushtaq Ahmad's article, “The Notions of Dār Al-Ḥarb and Dār al-Islām in Islamic Jurisprudence with Special Reference to the Ḥanafī School,” *Islamic Studies*, 2008, P. 10.

<sup>74</sup> Ibn al-Qayyim al-Jauziyya, *Ahkām Ahl Al-Dhimma*, vol. III (Dammam: Ramādi, 1997), 614.

Marthad, who had a partner named 'Inaq, before his Islam, when he migrated, he met her and wanted to marry her, then Marthad asked the Prophet for an explanation on the matter (marrying a scriptuary woman), whether he was allowed to marry that woman or not. In doing so, the verse (Q. 2:221) mentioned that the point is not to marry polytheistic women and men. Thus, Muslim jurists discuss the difference between the two words in detail. As a result, some scholars disagree that Q. 2:221 is based on the theory of *naskh* (abrogation) or the law of *takhsīs*, in conjunction with Q. 5:5, which ultimately based on this verse makes it permissible to marry a *kitābī* woman. However, Muslim women are forbidden by the majority of Muslim jurists to marry non-Muslim men.

Moreover, Umar's opinion demanding that Hudhaifa and Thalha divorce their wives because they were Jews and Christians was a personal opinion that was not justified as it contradicted the text of the Qur'ān which allowed marriages to non-Muslim women. al-Thabari mentions that there are even other accounts of Umar's views on the matter saying that a Muslim man is allowed to marry a Christian, not a Muslim woman married to a Christian man. Umar forbade the two companions to marry non-Muslim women because not many other companions would perform marriage with religious differences, so they were reluctant to marry Muslim women.

## 2.7 Contemporary Scholars' Perspectives on Interfaith Marriage

According to Yusuf al-Qardawi in his book '*Fiqh al-Aqaliyyat al-Muslima*', the rules of Muslim marriage with scriptural people are examined. In particular in the case of Muslim men with non-Muslim women. However, he mentioned that Umar b. al-Khattab did not support such marriage. al-Qardawi further mentioned that interfaith marriages are permissible as long as they promote the oneness of God (*tawhīd*).<sup>75</sup> However, nowadays it is not easy to identify religions other than Islam promoting *tawhīd*. It is also important to note that such marriages are not permissible if the woman is Jewish or Christian and is openly against Islam. One Egyptian contemporary scholar, Sayyid Sabiq, argues that marriage between a Muslim and the *Ahl al-Kitāb* is permissible based on clear evidence in the scripture texts. However, such marriages are considered disfavored (*makrūh*).

Mahmud Syaltut, Grand Imam of al-Azhar in 1958, who is considered a representative adherent of the Egyptian reformist, Muhammad Abduh, was influenced by his idea that interfaith marriage was one of the issues agreed upon by Muslim scholars and that knowledge of it was taken for granted (*qathī'*). So, according to Syaltut, every Muslim

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<sup>75</sup> Yusuf al-Qardāwī, *Fiqh Al-Aqaliyyat al-Muslima*, I (Cairo: Dār as-Shurūq, 2001), 91–92.

who believes otherwise has transcended the boundaries of Islam.<sup>76</sup> Moving from exogamy to endogamy, Shaltut presented the two views of 'Umar and Ibn 'Umar as a discussion and by taking a sociological approach to the law of interfaith marriage. If verse Q. 4:34, about *qiwāma*. Family leadership is given to men, so endogamy marriage will be relevant and understandable as the reason the majority of scholars allow Muslim men to marry non-Muslim women, it can even be a trigger that aims to send the message of Islam in educating prospective wives in accordance with Islamic teachings. However, when the man's leadership is lost and the children are left in the hands of the wife, then performing such a marriage is considered to have transcended the boundaries of Islam. Shaltut went on to express his grudge about the plight of many Muslim men of his day who were inferior to their European spouses, leaving their affairs to their wives (non-Muslims), thus misleading their families by raising children according to Christian or Jewish religious norms.<sup>77</sup>

Syaltut explains beyond the text as he hoped to want the government, -in this regard, the Egyptian government- to immediately pass a law banning such marriages when Muslim men's religious identity and nationalistic identity are weakened due to their non-Muslim wives. In the Islamic teaching, that preserving the religious identity and nationalism of the nation is one of the most fundamental obligations in Islam, he argues that this kind of marriage has damaged the Muslim community, as the identity of Muslim men both their religion and national is dissolved and assimilated into Western culture.<sup>78</sup> Instead, this view seems strange because it comes from a reformist mindset. However, in a sociological context it can help explain Shaltut's view, when he took office at al-Azhar, he showed Nasser's position when nationalism was at its peak that many Muslim scholars acted on the consequences of colonial powers that had invaded Muslim lands. In the end, Shaltut argues that preventing such legal marriages is more important than simply setting legal age limits, and also more important than restricting polygamy and divorce, and also more importantly criticizing "the house of obedience" (*bait al-tā'a*) when a wife refuses to obey her husband's orders. Shaltut invited all these calls as was common in his day. So, he directed the government's attention to what he perceived as a more dangerous threat: interfaith marriage. Again, he called for nationalism, as he thought that interfaith marriages in his day aimed to westernize the Muslim community and dissolve their sense of identity.<sup>79</sup>

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<sup>76</sup> Mahmud Syaltut, *Al-Fatāwā Dirāsa Li'mushkilat al-Muslim al-Mu'ashir Fi Hayātihi al-Yaumiyya al-'Ammā*, XVIII (Cairo: Dār as-Shurūq, n.d.), 238.

<sup>77</sup> Syaltut, 240.

<sup>78</sup> Syaltut, 241.

<sup>79</sup> Syaltut, 242.

While on the other sides, in order to refer to the thought of contemporary Western scholars such as Khaled Abou el-Fadl, he considers a fatwa of marriage with religious differences, it must be looking at sociological and theological considerations, this activity in issuing the fatwa the so-called individual *ijtihad*.<sup>80</sup> He said he is not sure that the proof or the evidence of the ban on exogamous marriage could be considered clearly or explicitly. In order to understand his thought as follows,

“In all honesty, personally, I am not convinced that the evidence prohibiting Muslim women from marrying a Kitābī is very strong. Muslim jurists took a very strong position on this matter. Many of them go as far as saying if a Muslim woman marries a kitābī she is as good as an apostate. I think, and God knows best, that this position is not reasonable and the evidence supporting it is not very strong.”<sup>81</sup>

However, he does not view such marriage as permissible, but rather his opinion moves from the realm of the ‘prohibited’ to the realm of the ‘unrecommended’. Moreover, he explains his experience for long time observing the cases of Muslim interfaith marriage, by quoting;

“I have reached this position after observing that the children of these Muslim/non-Muslim marriages in most cases do not grow up with a Muslim father and mother. I am not comfortable telling a Muslim woman marrying a kitābī man that she is committing a grave sin and that she must terminate her marriage immediately.”

On the same page, another woman asked him how if she marries a *kitābī*, it will be bringing her to be a *kāfir*. He gives an answer below:

“To be directly responsive to your question, do I believe that a woman who marries outside of the Muslim faith is a *kāfir*? The answer is no, I do not. Do I believe that it is advisable to marry someone outside the faith? No, I do not. In religious terms, it is among the issues that I would consider *makrūh* (or disfavored) for both Muslim men and Muslim women. This is based on the sociological reality that children who grow up with parents not sharing the same faith grow up in a state of confusion, which they resolve often by being faithless. Or if they have any faith, it tends to simply be agnostic. In my over 30 years in the West, working in case after case, all stories begin with love, dreams, and high hopes. Ten, twenty, thirty years later, from my experience and the experiences of so many that I have dealt with, the ending is not happy.”

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<sup>80</sup> Abdelnour, “The Islamic Theology of Interfaith Marriages between Theology, Law and Individual Ijtihad.”

<sup>81</sup> Khaled Abou el-Fadl, “Fatwa: On Christian Men Marrying Muslim Women,” The Search for Beauty: On Beauty and Reason in Islam, available at: <https://www.searchforbeauty.org/2016/05/01/on-christian-men-marrying-muslim-women-updated/>

He then clearly says that “The only advice I can give you is to ask yourself what role does your faith play in your life? Will you be happy if you are unable to submit to God with your partner according to the teachings of Islam?” in addition, he just gives the decision to her as whatever her decision, he just sincerely prays with all his heart that God blesses her, aids her, guides her and that she has success and happiness in her life. Finally, he says the intentions and actions of that woman are only God knows best.

The rise of pluralistic modern societies and the effects of globalization, according to some contemporary Islamic scholars and researchers, however, justifies the need to reevaluate the Shari'a laws that prohibit or limit women's rights to interfaith marriage.<sup>82</sup> The evolution of contemporary Islamic literature movement has been evolving in its understanding of such concerns, despite the problem of interfaith marriage. Many reformers sought to apply tried-and-true methods derived from resources that could lead to novel results in upholding the tenets of Islamic law. As might be predicted, the bulk of orthodoxy frequently conveys significant animosity toward these endeavors.<sup>83</sup>

Perhaps the Qur'anic prescription should be understood on two levels, according to Esposito: first, the "specific commandments, detailed explanations that can be applied according to the space and context of time," and second, "the ideals and values contained in the Qur'an, the realization of which specific rules must be met." Esposito's proposal might give modern readers more freedom in how they interpret passages from the Qur'an.<sup>84</sup>

The majority of traditional Islamic scholars think that interfaith marriage for Muslim women is forbidden for the following two justifications: (1) There is no single authority that states unequivocally that Muslim women marrying non-Muslims are forbidden. (2) Men are to serve as the household's head when Muslim women who are married to non-Muslim men face discrimination in their religious practices. In the contemporary world, these two fundamental causes give rise to some intriguing queries. What happens if the woman is treated equally in her specific household? What if her spouse promises—even in their Islamic marriage issue—not to force his religion on her or limit her practice of another faith? Additionally, in the absence of an affirmative condition

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<sup>82</sup> Ambali, M. A., “Islam and Inter-Religious Marriage”, 1-13, cited by Ibrahim Imam, “Shariah and Human Rights Perspectives on Interfaith Marriage: Challenges Impeding Its Practice in Nigeria,” *ICR Journal* 7, no. 4 (2016): P. 496.

<sup>83</sup> Alex B. Leeman, “Interfaith Marriage in Islam: An Examination of the Legal Theory behind the Traditional and Reformist Positions,” *Ind. LJ* 84 (2009): 761.

<sup>84</sup> John L. Esposito, *Women in Muslim Family Law* (Syracuse University Press, 2001), P. 132.

allowing a Muslim woman to marry a non-Muslim properly interpreted as a complete prohibition?

However, some contemporary scholars support a different reading of interfaith marriage laws, arguing that the Qur'anic laws show the precise context in which they were given.<sup>85</sup> According to Kahleel Mohammed, the historical presumption that women will convert to their future husbands' religion underlies the conventional interpretation of the Qur'ān that prohibits interfaith marriage for Muslim women.<sup>86</sup> Muslim women today live in different times and places, according to Mohammad. He also agreed that men and women are equal, that women have equal rights, and that these rights include the ability to marry whoever they choose. Furthermore, he argues that interfaith marriage can be made possible under the condition that neither spouse desires to be coerced into converting to another's religion.

Mohammed's reinterpretation is based on the changing social conditions of women today. She also noted that in the classical period when agreements were formed banning interfaith marriage for women, no regulations or laws existed to protect women's rights.<sup>87</sup> He opines, that when a couple contracts that the wife will not be forced to accept a religion other than Islam, the children will be raised according to her faith (or Islam) and there will be no negative image of Islam presented to her, then such a marriage contract is permissible. Abdullahi Ahmed An-Naim, an expert in Islamic family law at Emory College, has discussed the impact of contemporary gender dynamics and claimed that men are no longer dominating marriage partnerships in the social reality of today. As a result, the argument for the historical validity of Islamic tradition's laws is no longer valid.<sup>88</sup>

Recently, Hassan al-Turabi, a Sudanese Islamist scholar, published a fatwa endorsing the marriage of Muslim women with males of the Christian or Jewish faith. In doing so, al-Turabi expressly rejects the conventional view that marriage is prohibited in Islam because there is no such authority in the Qur'an. Al-Turabi, however, asserted that

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<sup>85</sup> There are some indications that the message of the Qur'an was shown to a specific situation. This point exists at the core underlying the reformist argument. If it is directed at a verse of the Qur'an specific to a particular case, then the present situation has changed, thus justifying this change in the rules of interfaith marriage.

<sup>86</sup> Mohammed, Khaleel. n.d. Imam Khaleel Mohammed's Defence of Inter-Faith Marriage. Available online: [https://freethinkingstokie.files.wordpress.com/2012/04/eng\\_bothpages](https://freethinkingstokie.files.wordpress.com/2012/04/eng_bothpages). Pdf (accessed on 12 June 2023).

<sup>87</sup> See, Khaleel's websites

<sup>88</sup> "Michelle Boorstein, *Muslims Try to Balance Traditions and Culture on the Path to Marriage*, Wash Post, May 27, 2008." <https://www.zawaj.com/articles/muslims-try-to-balance-traditions-and-culture.html>.

neither the Qur'an nor the Sunnah included a single verse that forbade such a union.<sup>89</sup> This is a declarative phrase that reiterates the Qur'anic prohibition on matrimony with unbelievers (kāfir). Al-Turabi disputes the notion that the consensus forbidding interfaith marriage between traditional Islamic clerics is universally binding and maintains that each instance of marriage between a Muslim lady and a Christian or Jewish man needs to be carefully considered. As long as the Qur'ān and the Sunnah are not made explicit, marriages between Muslim women and non-Muslims are regarded as legal.

Al-Turabi's assertion is intriguing, but it takes a significant inference to reach the conclusion that Muslim women can marry non-Muslims. Add to this, Mohammed's observation that the Qur'an typically supports the notion of marriage with other religions, including Christianity and Judaism, as shown by the explicit approval provided to Muslim men to marry members of these communities. The underlying reason the Qur'an does not include the same exception for Muslim women, according to the conclusion, is that the cultural context does not call for it. Both sexes would be eligible for marriage to those who follow the people of the Book if God had revealed the Qur'an today.

There is uncertainty in some Qur'anic texts, which some scholars believe to be the cause of similarities. According to scholars like Mahdi Zahraa, a professor in the School of Law and Social Sciences at Glasgow Caledonian University in Scotland, God unquestionably makes clear and convincing points in the revelation of the Qur'an that are significant to Islam while leaving other points vague so that an informed jury will interpret them flexibly in accordance with the demands of space and time.<sup>90</sup> Another factor contributing to Zahra's is the absence of concrete and convincing arguments against Muslim women getting married in the book, which is vehemently in support of the legality of such marriage under certain conditions. The fundamental issue is whether the forbidding of Muslim women from marrying non-Muslim males is a general rule that can be applied to all eras and locations or a local law that can be applied to the specific conditions in which revelation was given to him.

According to the explanation given, there has been a paradigm shift regarding the prohibition of interfaith Muslim marriage, which, according to traditional thoughts, is no longer relevant in the present according to some contemporary scholars. Let's look at the

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<sup>89</sup> Leeman, "Interfaith Marriage in Islam: An Examination of the Legal Theory behind the Traditional and Reformist Positions," 763.

<sup>90</sup> Mahdi Zahraa, "Characteristic Features of Islamic Law: Perceptions and Misconceptions," *Arab LQ* 15 (2000): 168-74.

opinions of the Indonesian Ulama Council, MUI, regarding interfaith marriage for Muslims in Indonesia.

## CHAPTER III

### THE MUI'S FATWA AND INTERFAITH MARRIAGE IN INDONESIA

#### 3.1 An Overview of the MUI

The Ulama Council at the Regional level was already in place when MUI was founded in 1975. Muslims have wanted to create a central Level Assembly ever since the early 1970s.<sup>91</sup> This was signaled by Pusat Dakwah Islam Indonesia's (also known as the Indonesian Islamic Da'wah Center, PDII) Alim-Ulama Conference, which was held in Jakarta from September 30 to October 4, 1970. The idea for the creation of an Ulama Council that included the Fatwa Institute was one of the outcomes of the discussions. The new PDII conference was conducted once more in Jakarta from November 26–29, 1974 since the circumstances and state of Indonesia at the time did not let those who were preoccupied with the upcoming elections in 1971.

The occasion was known as *Muballigh* (or Muslim preachers) Workshop all over Indonesia. The formation of an Ulema Council to support and maintain Muslim involvement in development was one outcome of the discussions. Finally founded on July 26, 1975, MUI. Suharto's own desire to establish a "single forum" that could accommodate the different interests and goals of Islamic organizations in Indonesia was one of several reasons that contributed to the MUI's founding.<sup>92</sup> The Indonesian Ulema Council is described as a platform for discussion of Muslim personalities and scholars in the MUI's Articles of Association, which incorporate this idea. However, MUI just serves as an intermediary institution, not a program implementer; its job is to coordinate the operations.<sup>93</sup>

In order to protect the ummah (*himāyat al-ummah*) for the advancement of the Republic of Indonesia, this ulama organization plays a broad role as a servant of the ummah (*khādimūl ummah*) and a partner of the government (*shādīqūl hukūma*). The following are the actions taken or goals that this organization set out to achieve. Giving individuals advice

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<sup>91</sup> In May 1975 the Ulama Council of Level I and some level II regions were established. For example, the East Java Ulema Council was established on January 7, 1975, Central Java was established on February 13, 1975, the Special Region of Yogyakarta in April 1975, and others.

<sup>92</sup> Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec's Discussion Papers* 12 (2011): 3–26.

<sup>93</sup> See, Majelis Ulama Indonesia, *Pedoman Dasar Anggaran Dan Rumah Tangga*, Hasil Munas 2015, P. 7.

on how to organize da'wah in a sensible and respectful manner in order to create the best society is the first step. This is known as amar ma'ruf nahi munkar. In order to realize the brotherhood of nation (or *ukhuwah wathaniyya*) and the brotherhood of humanity (or *ukhuwah insaniya*) and to strengthen both national unity and unity, the pattern of community and national connections must also be established. Thirdly, wisely issue fatwas, counsel, and warnings to the populace and government regarding religious and societal issues. Fourthly, acting as a middleman or facilitator between a *umara* (leader) and an ulama, or vice versa. Fifthly, developing a community relations framework that enables the fulfillment of *ukhuwah Islamiyah* and interreligious peace while bolstering a sense of togetherness and nationalism. In order to achieve the best society (*khaīra ummah*), also known as (or *baldatatun thayyibatun wa rabbun ghafūr*), seventy serve as a bridge between ulama and umara as well as a reciprocal translator between the government and the ummah. Eighthly, enhance communication and collaboration amongst groups, Islamic institutions, and Muslim scholars; develop collaborative initiatives for the benefit of the Ummah; and take additional actions consistent with the organization's goals. MUI is headquartered in Jakarta and has other provincial, district, and sub-district branches.<sup>94</sup> To manage its programs MUI has ten commissions concerned with:

1. Islamic brotherhood.
2. Da'wa.
3. Education and culture.
4. Economy and finance.
5. Development of Islamic community organizations and institutions.
6. Research and development.
7. Fatwas and laws.
8. Foreign affairs.
9. Interreligious harmony.
10. Women, youth, and family.

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<sup>94</sup> "Surat Keputusan Dewan Pimpinan Majelis Ulama Indonesia Tentang Pembentukan Komisi-Komisi," April 1, 1996., see also as cited by Moch Nur Ichwan, "'Ulamā', State and Politics: Majelis Ulama Indonesia After Suharto," P. 50.

It is still possible to find fatwas issued by the specific ulama, but there was a trend for more and more ulama to identify them as one of the representatives of the two organizations. When the Council of Indonesian Muslims (also known as Majelis Ulama Indonesia, or MUI) was founded in 1975, a new development took place. Within the MUI, where they jointly issue fatwas, traditionalists and modernists both have representation.

Indonesia is not comparable to Saudi Arabia or Egypt, where a grand mufti is in charge of issuing fatwas.<sup>95</sup> Islamic organizations in Indonesia use collective action to issue fatwas. The distinctive feature of this collective *ijtihād* or (*al-ijtihād al-jama'i*) is that each group holds a conference with their experts, and if necessary, other scholars who view it from a different perspective, before issuing a fatwa. As a result of their discussion, a certain Islamic body issued an official fatwa on the topic. Second, Indonesian fatwas are distinct due to their pluralistic or diverse nature. Numerous Islamic organizations, including the Muhammadiyah, NU, and MUI, are present in Indonesia. Branch offices for each of these organizations can be found in various provinces.

It's also crucial to remember that a non-binding opinion, known as a fatwa, that is given in Indonesia covers a variety of topics, including Islamic law family, Islamic philanthropy, economics, politics, and other concerns of religion and society. Although it differs from the situation of religious courts, wherein fatwas in Indonesia are not subject to state regulations. The MUI group and its fatwa will be discussed as a case study for the fatwa on interfaith marriage in Indonesia in this section, though. I shall first go into the foundation of the MUI's institution before talking about the fatwa.

According to its historical context, the creation of the MUI was the outcome of an extended dispute between religious groups and secular nationalist groups over the relationship between religion and state, as well as the government's concern for the Muslim minority. Mudzhar came to the conclusion that the country had experienced at least three significant political events prior to the formation of the MUI: the 1971 general election, which saw the emergence of the secular Golkar Party and the decline in the influence of Islamic political parties; the reduction of the number of Islamic political parties to one without still bearing the Islamic label; and the submission of a marriage bill that had previously been secular.<sup>96</sup>

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<sup>95</sup> Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā*, vol. 59 (Brill, 1997).

<sup>96</sup> Mudzhar, *Fatwas of the Council of Indonesia Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988*, 62.

MUI is expected to carry out one of its responsibilities, which is to provide fatwas and advise to the government and Muslims about issues pertaining to religion in general and to challenges facing the country specifically. The MUI is constantly under pressure to justify its policies and activities. In addition, it is not unusual for the MUI to hold views that differ from those of the government. A few examples include the use of IUD contraception, the prohibition of Muslims from celebrating Christmas (which led to Hamka's resignation as chairman of the MUI), the Porkas lottery, and others.<sup>97</sup>

Since its foundation, MUI has been run by eminent academics who have had an impact on its qualities. From 1975 to 1980, Hamka, the first Chairman, focused on fostering relationships with prominent officials and intellectuals from other Islamic groups, including Muhammadiyah, Nahdlatul Ulama, and the Islamic Union or Persis (established 1923). Hamka died in 1981. Hamka positioned MUI as the voice of Indonesian Muslims when interacting with the government, local Muslim groups, and global Muslim communities. In place from 1980 to 1984, Syukri Ghazali was the second MUI leader to succeed Hamka. Ghazali's leadership style at MUI focuses on streamlining internal operations. Hasan Basri (d. 2008), who served as the MUI's leader from 1985 to 1998, succeeded him. Basri attempted to position MUI as the leading spokesman for Islamic mass organizations while he was in charge. The council gained increasing sway in setting the course and discourse of Islamic practice in Indonesia under Basri's supervision. The Yafie phase, which lasted from 1998 to 2000, was then carried on by Ali Yafie (d. 2023). 14 years, from 2000 to 2014, saw Sahal Mahfudz serve as MUI's leader. Din Syamsuddin served as the MUI's sixth head for one year, from 2014 to 2015. Ma'ruf Amin then took over as general chairman of MUI for 5 years, from 2015 to 2020, replacing the previous leadership relay. Miftachul Akhyar is now in charge of the eighth administration since 2020.<sup>98</sup>

MUI published religious instruction (*tausiyah*), a recollection (*tazkirah*), and an appeal (*himbauan*) in addition to fatwas. An instruction (or mandate), which is regarded as being more firmly directive to society, is another higher type of advice.<sup>99</sup> The Fatwa Committee (or Komisi Fatwa) is the MUI committee in charge of issuing fatwas. It is led by a chairman with assistance from a deputy chairman and committee members. The MUI only offers fatwas when the government or a chapter of the MUI receives formal requests,

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<sup>97</sup> Mudzhar, 76–78.

<sup>98</sup> See more discussion of the article of Hosen, “Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975–1998).” Especially, a least the leadership of the general chairman from 1975 until 1998.

<sup>99</sup> Ichwan, “‘Ulamā’, State and Politics: Majelis Ulama Indonesia After Suharto.”

and the majority of its fatwas are given during the MUI's conference. In general, performing communal *ijtihād* (consensus) fills the position of a grand mufti found in several Islamic nations like Egypt and Saudi Arabia.<sup>100</sup>

### 3.2 Fatwa Issuance of MUI

As a big tent, MUI has been able to establish itself as the most respected Muslim institution in Indonesia for the issuing of fatwas. The responsibility of negotiating and issuing fatwas on Islamic legal matters that specifically affect the Muslim community has been delegated to the fatwa commission. In Atho's analysis, it was discovered that the Fatwa Commission convened hearings when necessary or whenever the MUI had been consulted on specific matters of Islamic law by the public or the government, followed by commission hearings or in bigger venues, such as the annual conference of scholars held by the MUI.<sup>101</sup>

In making fatwas, MUI relies on postulates that usually begin based on verses of the Qur'an, *hadith* related to the subject, and quotations of fiqh texts or views of classical scholars. Rational arguments are also given as supporting evidence. In accordance with Atho, it was found that in January 1986 a detailed manual for issuing fatwas was published by the MUI, which explained that the basics for issuing fatwas, in order of level, were: the Qur'ān, Sunnah, *ijma'*<sup>102</sup>, *qiyas*.<sup>103</sup> But in practice, such methodological procedures are not always used by the MUI,<sup>104</sup> sometimes even using rational basis or even not using text or rational basis.

An *ijtihād* mechanism carried out by MUI scholars to issue the fatwa does not only rely on the scripture text revealed whether it is from the Qur'ān or Sunnah. In addition, the fatwa also should give consideration to the traditions of the community. Similarly, al-Qarāfi (d. 684/1285) mentioned in his book, *al-Anwār*, that a *mujtahid* (a person who does the *ijtihād*) when he issued a fatwa, should understand the existence of the customs (*al-urf'*) in the local community so that Islamic legal issued by him does not contradict or eliminate a *maslahah* of the community". In addition, along with the development of modern life today, there are many social changes in society, then there is a must to change a legal order that

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<sup>100</sup> It is mentioned in the *Pedoman Dasar MUI*, that a National Conference (the so-called, Musyawarah Nasional, MUNAS) is conducted once every five years.

<sup>101</sup> Atho, Fatwa P. 79

<sup>102</sup> *Ijma'* means the consensus of knowledgeable legal scholars in a given age, regarded as infallible. See, N. J. Coulson, *A History of Islamic Law* (AldineTransaction, 2011), 77. Some scholars define *ijma'* as an agreement of the whole community of Muslims.

<sup>103</sup> *Qiyas* is a restricted form of *ijtihād* and limits personal interpretation to reasoning by analogy.

<sup>104</sup> Atho, Fatwa P. 139

regulates the social behavior of society based on the adaptive conditions of each place and era.

Today, numerous nations claim that a country's fatwas serve three key purposes that allow for differentiation between them. First of all, when a state makes shari'a the cornerstone of its legal system and fully applies positive law in the public realm, fatwas of that state play a crucial role in governing its legal system. Second, secular legal systems have been implemented in other governments, negating the relevance and significance of fatwas in the public realm. Third, the role of fatwas is seen as having an impact in the public realm in other governments that have combined the application of secular law and Islamic law systems.<sup>105</sup> Considering that Indonesia uses the third pattern of the legal system, I believe it is relevant and fascinating to conduct a study of the fatwa in Indonesia. Furthermore, it is important to remember that the Sunni Muslim community makes up the majority of Indonesia's Muslim population.<sup>106</sup>

According to Mudzhar, there are some indicators that encourage the MUI to issue a fatwa that is first, to support the government policies.<sup>107</sup> Second, it is due to respond to the challenges of modern lives.<sup>108</sup> Third, maintaining religious harmony in Indonesian society is recognized as a heterogeneous society.<sup>109</sup> Fourth, it is to comply with the demand of Indonesian Muslims at the very beginning that the MUI's institution is deemed by Muslim intellectuals as a means to legitimize the government's policies. For instance, Buya Hamka before the establishment of the MUI is one of the Muslim intellectuals who rejected the idea of establishing the MUI, but later his thought changed from rejecting to supporting.

In this regard, as stated in the Council's statute, the MUI conducts a thorough investigation before issuing a fatwa. The first step in this investigation is to fully visualize the issue at hand (*taswawur mas'alah*), formulate the issue, taking into account any resulting socio-religious effects, and identify the key legal issues (*shari'ah* norms) that are pertinent to the issue. The extensive study mentioned in paragraph (1) contains:

- A study of the views of classical *fuqahā*.

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<sup>105</sup> J. N. D. Anderson, "The Significance of Islamic Law in the World Today," *The American Journal of Comparative Law* 9, no. 2 (1960): 187–98, <https://doi.org/10.2307/837190>.

<sup>106</sup> The adherents of Sunni Islam are referred to in Arabic as *ahl as-sunnah wa l-jamā'a* (the people of the Sunnah and the community) or *ahl as-Sunnah*.

<sup>107</sup> Such as, fatwas on the breeding of frogs (21 July. 1984), *halāl* eating rabbits for food (2 Mar. 1983), and the use of contraceptives in family planning (20 Oct. 1983).

<sup>108</sup> For instance, fatwas on the permissibility of corneas donation (13 Jun. 1979), and heart-valve transplantation (29 Jun. 1987).

<sup>109</sup> For example, fatwas on Muslims' attendance at Christmas celebrations (3 Mar. 1981)

- The opinions of madhhab imams or qualified Ulama (*mu'tabar*).
- A relevant study of the issue.
- The views of jurists regarding the matter to be discussed.

There are instances when it is necessary to conduct a thorough investigation, which was accomplished by assigning committee members with expertise in disciplines related to the issues with the fatwa to conduct research.<sup>110</sup> Most importantly, the substance for issuing the fatwa that the MUI had maintained takes into account the authority of legal regulation by the Shari'a and considers the public benefit (or *maslahah*) the so-called '*maqashid al-Shari'a*'. It should be emphasized that the presence of some basic attitudes of the MUI that then affect the nature of its fatwas does not mean that these fatwas in terms of legal methods cannot be accounted for. Some of these fatwas are based on the proof of text (or *naqli*) and the proof of rational (or *aqli*) arguments. These indicators seem to complement or co-act intentionally or coincidentally.

The making of a fatwa (formulation of Islamic law) cannot ignore the socio-political background in which Islamic law is issued. An-Naim, in addition to asserting an opinion that there are certain aspects of Islam and Sharia that are universal, nevertheless he justifies that the interpretations and practices of all religions, including the Islamic legal system, are strongly influenced by the sociological, economic, and political conditions of a particular society, in which there are its own local variations and peculiarities.<sup>111</sup> This is in line with K.H Sahal Mahfudh's assertion that in its formation jurisprudence always has a context with real life and is therefore dynamic.<sup>112</sup> As in the MUI fatwa on marriage and family issues, it has been colored by certain socio-political factors, namely Islamic-Christian rivalry as it will be discussed more in the following section. This factor must also be seen in the formulation of Islamic law so as to come to a certain conclusion.

In addition to affirming that the formation of Islamic law is influenced by socio-cultural and socio-political, it is confirmed by Atho that Islamic law is not really a mature

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<sup>110</sup> Majelis Ulama Indonesia, *Surat Keputusan Dewan Pimpinan MUI Tentang Pedoman Penetapan Fatwa Majelis Ulama Indonesia*, 2015.

<sup>111</sup> Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press, 1996), xiv.

<sup>112</sup> Sahal Mahfudh, *Nuansa Fiqh Sosial* (LKIS Pelangi Aksara, 2003), 30–31.

legal system from heaven and is free from the flow of human history. Islamic law is the result of human interaction and the social factors that surround it.<sup>113</sup>

### 3.3 The MUI's Fatwa on Interfaith Marriage

In 1975, the MUI Jakarta issued a fatwa regarding interfaith marriage, and in 1980, the national MUI did the same. The Jakarta MUI reiterated the prohibition against interfaith marriage in a public letter that was published in 1986. The debate surrounding the 1974 Marriage Law is tied to the fatwas issued by the MUI.<sup>114</sup> Why are the fatwas rigid and constant? One explanation is that the encounter between a Muslim community and another community takes place at two levels: the interaction between religious concepts and practices and the sociopolitical context. It should be remembered that Indonesia's emergence of Islamic law as a socio-political demand is not something that has happened in a historical vacuum.

The MUI's fatwa against interfaith marriage is one that will be covered in this study. This topic has been extensively debated in classical fiqh literature. This fatwa was released on June 1, 1980, and it mentions that it was done so in response to the public's increased interest in performing interfaith marriage. In actuality, this fatwa was issued in 1980 during the MUI's Second Annual Conference rather than at the regularly scheduled fatwa commission meetings. It appears that religious authorities prioritized the fatwa as a way to address the issue facing the Muslim community. It is crucial to emphasize that there are two statements in the fatwa. First, it is forbidden (*harām*) for a Muslim woman to wed a non-Muslim man, and second, it is forbidden for a Muslim man to wed a non-Muslim woman. The fatwa was signed by Hamka, the General Chairman, and Kafrawi, the Secretary of MUI, which was signed by the Minister of religious affairs, Alamsjah Ratu Perwiranegara.<sup>115</sup>

The fatwa contains a number of proofs (or *dalīl* pl. *adilla*) to support the issue, whether they are taken directly from the Qur'an or from the *hadith*. However, it is crucial to note that the fatwa makes no reference to any proofs from classical fiqh texts. First, the Qur'anic verse cited is the one that forbids a Muslim man or woman from getting married to a polytheist since God values a Muslim slave higher than an idolater. The second is whether it is acceptable for a Muslim man to wed a member of Ahl al-Kitāb (Christians

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<sup>113</sup> Muhammad Atho Mudzhar, "Social History Approach to Islamic Law," *Al-Jāmi'ah: Journal of Islamic Studies* 36, no. 61 (1998): 78–87.

<sup>114</sup> Muhamad Ali, "Fatwas on Inter-Faith Marriage in Indonesia," *Studia Islamika* 9, no. 3 (2022).

<sup>115</sup> Majelis Ulama Indonesia, *Tuntunan Perkawinan Bagi Umat Islam Indonesia* (Jakarta: Sekretariat MUI, 1986), 71–73.

and Jews). The third prohibits a Muslim lady from getting married to a non-Muslim. The fourth verse talks about the instruction to keep herself and her family out of hell.<sup>116</sup> The *hadīth* quoted is about first, the doctrine that a good marriage is equal to half of the faith and as outlined by the Prophet's tradition instructed to Muslims: "Do not marry only for the sake of beauty; may be the beauty becomes the cause of moral degradation. Do not even marry even for the sake of wealth; maybe wealth becomes the reason for insubordination. Marry rather on the ground of religious devotion."<sup>117</sup> Secondly, the belief is that children are born in a state of purity (*fitnah*), only their parents make them Jews, Christians, or Zoroastrians (*faabāhu yuhāwidanihi wa yunāshironihi*).<sup>118</sup>

The Qur'an explicitly permits a Muslim man to marry a scriptural woman, yet the fatwa forbids it. Such marriages are prohibited by the fatwa because the harm (*mafsadah*) outweighs the benefit (*maslahah*). The fatwa was radical because it went against what the Qur'an plainly declared, even though it was especially directed at what was happening in Indonesia. This fatwa also conflicts with the traditional fiqh works, which the MUI typically uses as a guide for issuing other fatwas. The traditional fiqh texts concur that it is permissible for a Muslim man to wed a member of the Ahl al-Kitāb.<sup>119</sup>

The MUI issued 11 MUI fatwas at its 7th National Conference in Jakarta in 2005, one of which was a fatwa against interfaith marriage. The Fatwa Committee's ruling of the Indonesian Ulama Council No. 4/Munas/VII/MUI/8/2005 regarding interfaith marriage will be fully quoted below for more information. The following statements were made by the Indonesian Ulama Council (MUI). The reason was mentioned in the form of a fatwa, stating as follows;

- It suggests that there have been a lot of interfaith weddings recently.
- That this interfaith union frequently causes discomfort in the community and sparks debate among Muslims.
- That an idea supporting interfaith marriage within the context of human rights and the *maslahah* assumptions has arisen within society.

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<sup>116</sup> Q. 66:6

<sup>117</sup> Sunnah Ibn Majah; Book 11 No. 1859.

<sup>118</sup> Majelis Ulama Indonesia, "Tuntunan", P. 75-77

<sup>119</sup> 'imādu ad-Dīn, Ibn al-kathīr, *Tafsir Al-Qur'ān al-'Aẓīm Li' Ibn al-Kathīr*, I, vol. I (Damascus: Beirut, 1994), 319–20. *At-Tahrīr Wa at-Tanwīr*, II:359.

- MUI deems the phenomena of interfaith marriage issue, then it is vital to put interfaith marriage fatwas into effect as guidelines in order to realize and preserve marital peace.

This fatwa was issued in Jakarta, and signed by Ma'ruf Amin as General Chairman, and Hasanuddin as Secretary. From the explanation of the contents of the fatwa above, the MUI fatwa on interfaith marriage is broken down into two things, namely that interfaith marriage is *harām* and invalid without exception. While the case of Muslim men with women of the people of the book is considered *harām* as well and illegitimate based on the view of *mu'tamad* (or the most authoritative). Interestingly, based on the discussion in chapter two above, shows that this fatwa contradicts the view of the majority of scholars who are allowed in the case of Muslim men with non-Muslim women. In fact, the Qur'ān itself explicitly permits such marriages based on the Qur'ānic verse Q. 5:5, and so does the classical jurisprudence literature of this marriage for the majority of scholars allowed, even as stated by Ibn 'Ashūr that the issue of marriage as a matter agreed upon by the Muslim scholars across the period. And the question of why the MUI fatwa contradicts the perspective of classical scholars?

In order to understand the answer, we probably need to find the answer by looking back at the developments that happened in the period during which the first time that fatwa was issued by the council in 1980. In fact, before the national council issued the fatwa, on August 11, 1975, the Indonesian Ulama of Council Jakarta issued a statement prohibiting a Muslim man from marrying a non-Muslim woman, even one from the scripture. Thus, six years later in 1986, the MUI Jakarta again have taken into account the issue of interfaith marriage which in these two times, it is interesting to understand why the MUI issued more than one time. We look at the two documents, which contained the reason why the council issued the fatwa.

The first document, as mentioned by Mudzhar, stated that the council had been alarmed by reports in the Jakarta newspaper Sinar Harapan, commonly known as the Christian community owner, telling the readers about a marriage between a Muslim woman and a non-Muslim man, which was performed in consideration of the man's religion and was referred to as a Pancasila marriage or this form of marriage is under the principle of Pancasila. The council believed the phrase "Pancasila marriage" to be derogatory and felt it vital to provide the Muslim community with guidance on such issues. As a result, the council clarifies in its legislation how Muslims view selecting a partner. First, by

emphasizing that a marriage must aspire to obey God or be future-focused and that it is not simply an exterior commitment between the spouses. However, the law recognized that a Muslim man may wed a non-Muslim lady provided he is determined to bring up his children according to the teachings of Islam. A non-Muslim man is reportedly required to pledge to convert to Islam after tying the knot with a Muslim woman, and even his guardian is required to sign a written contract stating that if the non-Muslim man reverts to his former religion, his marriage to the Muslim woman will be dissolved (*faskh nikāh*) at that point. The Indonesian Council of Ulama of Jakarta also pointed out other Qur'anic texts, including the verses stated above, and the statute was also signed by the chairman, Abdullah Syafi'i, and the secretary, Ghozali Syahlan.<sup>120</sup>

The second document, in the form of an open message (Indonesian: *surat terbuka*), was published by the Indonesian Council of Ulama in the Jakarta region on September 30, 1986, which was again almost a year later. Muslims were asked in the letter not to officiate at interfaith weddings. After reviewing the 1975 document and the MUI's national fatwa on the ban on interfaith marriage in 1980. As a result, the letter addressed the key points of what would go wrong if there is still one to perform such a marriage. It states that a Muslim should not marry a non-Muslim regardless of their condition. A Muslim man should consider if he can convince his future wife to convert to Islam if he is dealing with particular situations, such as living in a community where non-Muslims predominate. If "no," she should renounce her plan to be married. The letter further indicates that, in order to comply with Islamic law, the marriage administration should take place at the Office of Religious Affairs (Kantor Urusan Agama, KUA) if the marriage of a non-Muslim man and non-Muslim woman is still performed by the spouse of a different religion. This letter demands unequivocally that the workers at the Civil Registry Office (*Kantor Catatan Sipil*), who register non-Islamic weddings, show respect for the beliefs of those who visit the office to register marriages. The letter requests that the Civil Registry Office encourage the spouse to register their marriage with the Office of Religious Affairs (or *Kantor Urusan Agama, KUA*) if one of them is a Muslim. The 1945 Constitution, the 1974 Marriage Law, and the values of Pancasila are all upheld by this letter. Ahmad Mursjidi and Ghozali Syahlan, the chairman and secretary of the Jakarta Indonesia Ulama of Council, respectively, signed the letter.<sup>121</sup>

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<sup>120</sup> Majelis Ulama DKI, *Fatwa Majelis Ulama DKI Jakarta* (Jakarta, n.d.), 3–9. In Atho Mudzhar, p. 87

<sup>121</sup> Majelis Ulama Indonesia DKI Jakarta, *Seruan Tentang Perkawinan Antar-Agama* (Jakarta, 1986), 1–19.

However, as was previously indicated, the MUI's fatwa was issued numerous times, starting in 1975, continuing in 1980, 1986, and ending in 2005. These fatwas' theological interpretations are consistent with the orthodox view of Islam, which holds that there are two worlds—the Muslim world and the non-Muslim world—into which various terminology from Islamic literature is translated and interpreted in the context of interfaith conflict. As a result, one could contend that contextual interpretation has been disregarded in the fatwas when *mukmin*, *mushrik*, and Ahl al-kitāb (Yahūd and Nasārā) are understood to have merely meant Muslims and non-Muslims. Despite this, all fatwas reach the same conclusion—that interfaith marriage is prohibited without exception—in contrast to the ancient literature in which several Muslim jurists debated the legality of such marriage. It is crucial to remember that, as Atho pointed out, the MUI's 1980 fatwa on the ban on interfaith marriage refers to "non-Islam" rather than Christians or Jews. If there is no Jewish community in Indonesia, the word implicitly alludes to the country's Christian population. The MUI fatwa was initially intended to stop Indonesian Muslims, including men and women, from converting to Christianity. Around the 1970s and 1980s, there was a lot of conflict between Muslims and Christians in situations like these. In fact, the Muslim community was concerned about the threat of Christianization performance.<sup>122</sup>

Muhammad Atho Mudzhar cited in his dissertation:

The issuance of a fatwa by the MUI prohibited Muslim men and women from marrying non-Muslims, including those of the people of the book (or *ahl al-kitāb*). It is probably due to having been motivated by looking at society in a realm that does not give permission to Muslim men to marry scriptuary women, although the dominant opinion's ulama of shari'a allowed such marriage. Indonesian Ulama considered the competition between Muslims and Christians has been a terrible relationship and a vulnerable point for the Muslim community's interest. In doing so, the door to the possibility of interfaith marriage must be closed altogether. The problem with this issue is that Muslims at that time were a majority group in terms of numbers but as a minority group regarding their role in the political arena.<sup>123</sup>

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<sup>122</sup> Muhammad Atho Mudzhar, "The Council of Indonesian Ulama on Muslims' Attendance at Christmas Celebrations," in *In Islamic Legal Interpretation by M. Khalid Mas'ud, Brinkley Messick, and David S. Powers* (Harvard, 1996), 97–108.

<sup>123</sup> Regarding the context of Indonesian politics in the 1950s – 1970s, the Islamic Party participated in general elections (*pemilihan umum*) several times. In 1955, six Islamic political parties gained only 116 seats (45%) of the 257 seats. rest of the seats have been obtained by the secular parties, such as the Indonesian National Party (PNI) 57 (22%), the Indonesian Communist Party (PKI) 39 (15%), and several other political parties (13%). Meanwhile, in 1971, Islamic political parties won only 26% of the whole seats, in 1977, won (27.5%) of the total number of parliamentary seats, and the rest were won by secular parties. In the 1982 general election, it won seats (26%), and in 1987 (15.25%) These data were cited by Atho, who drew from a number of sources. In 1955, from Herbert Feith, "The Indonesian Elections of 1955", p. 58-59. Data 1971-1977, Brian May, "The Indonesia Tragedy", P. 261, for 1982-1987, Bachtiar Effendy, *The "Nine Stars, The Politics*, P. 188.

However, from a methodological point of view, the fatwa was meant to cancel the Qur'ānic verses which clearly mentioned the permissibility of Muslim interfaith marriage by using the principle of *maslahah* (or the Muslim community's interest), or at least postponing the implementation of the Qur'ānic instruction due to a particular matter. This principle of *maslahah* was previously used by the second caliph, 'Umar B. al-Khattab. Thus, this principle was deemed by Malik B. Anas as one of the sources of Islamic law. It is said historically that 'Umar a. al-Khattab has taken various decisions which are considered contrary to the statements of certain verses of the Qur'ān if he is of the opinion that in certain circumstances *maslahah al-ummah* (the interest of Muslims in general) should be given priority over other things. He forbade cutting off the hands of thieves in times of famine (or *majā'a* times). He refused to give some zakat to *mu'allafat qulubuhum* (non-Muslims who needed sympathy) when Muslims were strong enough to face external challenges.

According to al-Qardawi, interfaith marriages for Muslim men marrying non-Muslims today are forbidden because they are based on the principle of *sadd al-adharāi'* (or blocking a means) and the damage caused by such marriages. Like the basic principle that states that preventing *mafsadah* takes precedence over taking benefits. Thus, the view that it is permissible to marry a non-Muslim woman must be based on the necessary emergency. However, endogamous marriage is highly recommended and such marriages take precedence in any way, especially theological aspects, thought, and *madhab*. In this regard, al-Qaradawi's views are essentially similar to those of Khaled Abou el-Fadl who indirectly forbade or at least 'discouraged' Muslims from marrying non-Muslims. Likewise, Hamka in his *tafsir* book, emphasized that what should be the orientation of the purpose of marriage of a Muslim is to be able to provide benefits for both spouses and maintain the faith of his children so that they always become followers of the Prophet Muhammad's people.

As Hamka in Tafsir al-Azhar cited:

"Interfaith marriages due to differences of religion, although in Islam, Muslim men may marry scriptuary women, but in fact, today's reality, such marriage rarely brings benefits to Islam. The interfaith marriages we see today are only due to promiscuity (or *pergaulan bebas*), and indulgence of love romance which ended up ruining their religious teachings from both the spouses and their

children will be no longer religiously individuals. As known, it will be developed as well as religious education has been implemented and learned.”<sup>124</sup>

However, the basic principles governing Muslim marriage have inspired the MUI as a forum (or *wadah*) for Indonesian scholars to issue marriage guidelines for Indonesian Muslims, which are then understood and followed by Muslims in Indonesia. In fact, regarding the statute of the MUI on the guidelines of marriage for the Muslim community, it is considered guidance to underline for a Muslim to follow.<sup>125</sup> The First note is that Marriage in the view of Islam is something noble and sacred, means worship of God, following the sunnah of the Messenger of God, and is carried out on the basis of sincerity, responsibility, and following the provisions of the law that must be heeded. The second note, General provisions regarding the legal requirements for marriage according to Islamic teachings are the presence of a bride and groom, the presence of two witnesses, a guardian, *ijāb qabūl*, and dowry (*mahr*). The third note, the provision of marriage for Indonesian citizens (including Indonesian Muslims) must refer to the Marriage Law (Law No. 1 of 1974) which is a generally accepted provision of State law, binding and eliminates dissent, according to the rules of Islamic law: "government decisions are binding to implement and eliminate dissent." (*Hukm al-Hākim ilzāmun wa yarfa' al-khilāf*). On the fourth note, Indonesian Muslims adhere to the *Ahlus sunnah wal jamā'a* and the majority are Shafī'i, so one should not look for arguments that benefit oneself. The Fifth note, Encourage Indonesian Muslims, especially the younger generation, to carry out marriage in accordance with the provisions of the law mentioned above. Sixthly, scholars, missionaries, preachers, and marriage organizers provide explanations to the community so as not to be swayed by various opinions and have legal certainty in carrying out marriage by guiding the above provisions.

In addition, in a country that is neighbor country of Indonesia, Malaysia, during the 14th conference held on 14 July 1977, the Fatwa Committee National Council of Islamic Religious Affairs decided that marrying a scripture woman is considered lawful (halal). However, marrying a Christian or Jewish woman who is not classified as *ahl al-kitāb* is prohibited.<sup>126</sup>

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<sup>124</sup> Haji Abdul Malik Abdul Karim, Hamka, *Tafsir Al-Azhar*, vol. I (Pustaka Nasional PTE LTD Singapura, 1989), 523.

<sup>125</sup> Majelis Ulama Indonesia (MUI), *Prosedur Pernikahan* (Jakarta: Sekretariat MUI, 1996).

<sup>126</sup> Md Zahidul Islam, "Interfaith Marriage in Islam and Present Situation," *Global Journal of Politics and Law Research* 2, no. 1 (2014): 36–47.

### 3.4 Interfaith Marriage in Indonesia: The Practices and The State Legal Discourse

Interfaith marriage discourse in Indonesian Muslims remains one of the most controversial areas of marriage law. The validity or invalidity of marriage between Muslims and Christian women or Christian men and Muslim women under Article 2 of the Marriage Law is a widely contested article. According to the majority view of Muslim jurists, the first case is permissible (a Muslim man marrying a non-Muslim woman), but the second case is not allowed. This prohibition on interfaith marriage is further emphasized in Presidential instruction (*Instruksi Presiden, Inpres*) No. 1/1991 on the Compilation of Islamic Law (*Kompilasi Hukum Islam, KHI*), where it is affirmed that it is unlawful for Muslims, both men and women, to marry non-Muslims.<sup>127</sup> In the Indonesian context, the absence of probability for mixed marriage in Indonesian law makes some couples' interfaith marriage several alternative ways. First, a step that is often performed by the spouse is converting to his or her partner in order to legalize their marriage. Second, it is widely done by those the spouse aims to perform such marriage outside Indonesia or a country that accommodates interfaith marriages. Thus, when they come back to Indonesia, they as a couple legally register their marriage in Indonesia. Although, there are strong indications that although interfaith marriages are not legally permissible, they are still carried out in various alternative ways.<sup>128</sup>

Historically speaking, it is important to note that Interfaith marriage is one of the most controversial issues in Indonesia's legal history. This fact can be illustrated by the debate both among the Muslims outside Parliament's building and among the members of parliament itself relating to a new Marriage Bill, which was introduced on July 31, 1973.<sup>129</sup> The Muslims were outraged because no Muslim leader or Minister of Religion had been contacted when it was drafted. Additionally, they believed that the majority of Bill's articles were in many ways in opposition to the *shari'a* teachings, suggesting that it seems was

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<sup>127</sup> Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, vol. 4 (Amsterdam University Press, 2010).

<sup>128</sup> Siti Musdah Mulia, "Promoting Gender Equity through Interreligious Marriage; Empowering Indonesian Women," *Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia*, ISEAS, Singapore, 2009, 255–82.

<sup>129</sup> It is vital to note that previously, the proposed Marriage Bill was started in 1952 by the Minister of Religion, but until 1958, the draft was not discussed among the parliament. And then in 1967, parliamentary debates on these bills for 3 years from 1967-1970, however, it did not produce any result. And in the end, a new Marriage Bill was drafted back to Parliament on July 31, 1973. See, more discussion on this issue, Katz & Katz, "Indonesian Marriage Law", p. 660.

designed to eradicate Islamic influence in the country. Therefore, it is not unexpected that there were many whispers of Christianization conspiracies at the time.<sup>130</sup>

It is significant to note that a few measures that were introduced sparked controversy in a variety of ways. Muslim marriages must be recorded with civil registration (*Kantor Catatan Sipil*) in order to be valid, according to Article 2(1) of the first document. According to the Second Articles 3 and 40, Muslims who want to get a divorce or marry multiple people must apply to a civil court for the required authorization rather than an Islamic one. Third, Article 11(2) declared that marriage should not be prohibited due to religious differences. The Fourth, Articles 8(c) and 62, deal with the legal status of adopted children, who would have the same legal rights as natural children. The Fifth, Articles 13 and 49, which have the status of engagement and demand that the man marry the woman (if she desired) if the pregnancy was caused by an engagement, would grant the child the same legal standing as a child in marriage, which is in line with the principles of the Shari'a.<sup>131</sup>

According to John, he claims that every one of these Articles essentially places civil law above the blasphemously revealed Islamic law.<sup>132</sup> It is known as an "ijāb-qabūl" because a shari'a-compliant marriage contract between the groom and the bride's father or wali (guardian) was all that was necessary for a Muslim marriage to be lawful. It is clear that civil registration is not necessary for a valid marriage under the shari'a.

Religious differences should not be a hindrance to marriage, according to Bill's article. In contrast to Islamic law, it simply provided a means for a Muslim lady to choose to wed a non-Muslim man. Muslims have long voiced their opposition to these ideas. They had long opposed a similar clause in the Dutch rule on mixed marriages, which had been established in 1898 and was still in force at the time the proposed marriage legislation was being considered. Muslims just consider allowing interfaith marriage as a rejection of the notion that Islam is a way of life and as a valid reason to convert Muslim women to Christianity.<sup>133</sup> Due to this reason, some Muslim leaders opposed these proposed Bills in general, and some said this was named "Veiled Christianization".

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<sup>130</sup> Arskal Salim and Azyumardi Azra, *Shari'a and Politics in Modern Indonesia* (Institute of Southeast Asian Studies, 2003), 82.

<sup>131</sup> Proposed Marriage Law of 1973, articles 2(1); 3; 40; 11(2); 8(c), 62; 13; 49 respectively for the five central issues; see Katz & Katz, PP. 661-62

<sup>132</sup> Anthony H. Johns, "Indonesia: Islam and Cultural Pluralism," *Islam in Asia: Religion, Politics and Society* 202 (1987): 29.

<sup>133</sup> H.M Rasjidi, *Kasus R.U.U Perkawinan Dalam Hubungan Islam Dan Kristen* (Jakarta: Bulan Bintang, 1974), 12.

Muslim groups, however, rejected the proposed clauses because they conflict with shari'a law. At that point, the government finally made the decision to approve important Bill modifications. In the end, President Soeharto bowed to pressure from the Muslim United Development Faction (FPP) in the parliament and consented to have all clauses that were against Islamic law removed. On December 22, 1973, the parliament eventually adopted the modified Bill, and on January 2, 1974, President Soeharto signed it into law, creating Indonesian Marriage Law No. 1 of 1974. Government rule No. 9 of 1975 was passed on April 1 and became effective on October 1 as the implementing rule for this new marriage law. The procedures for marriage, divorce, and similar legal proceedings, together with other technical issues, are primarily addressed in this implementing regulation.

The question of interfaith marriage has been a topic of discussion ever since the Indonesian Marriage Law of 1974 came into effect. Marriages between Indonesians who practice various religions are not expressly forbidden or permitted under the Marriage Law or the rules that administer it.<sup>134</sup> The legality of interfaith marriage in Indonesia has become a hot topic of discussion as a result of this. Some claim that the Marriage Law governs interfaith marriages implicitly. Interfaith marriage appears to be covered by provisions like Article 2(1), which specifies that the partners' religious standards will be followed throughout the marriage ceremony. Only to the extent that these religious laws are permitted would such weddings be allowed. The majority of Indonesians cannot legally marry between religions without one of the parties converting to the other, according to those who support this strategy. Thus, despite Article 2(1) of the Marriage Law continuing to be in effect and permitting civil marriages, an Indonesian court ruled in 1975, one year after the Marriage Law's passage, that interfaith marriages could be consummated at the Civil Registry Office, which has the authority to perform marriages between non-Muslims.<sup>135</sup>

In fact, recently, the Council gave an opinion on religious differences in marriage in the Constitutional Court (*Mahkamah Konstitusi, MK*). This is because of a number of parties, E Ramos Petege filed a judicial review of the Marriage Law No. 1/1974 which is closely related to the interfaith marriage issue.<sup>136</sup> This also shows that MUI is still

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<sup>134</sup> Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press, 2010).

<sup>135</sup> Sebastian Pompe, "A Short Note on Some Recent Developments with Regard to Mixed Marriages in Indonesia," *Bijdragen Tot de Taal-, Land-En Volkenkunde*, no. 2/3de Afl (1991): 261–72.

<sup>136</sup> Judicial review was previously filed in 2014, and again a number of parties submitted a judicial review of the 1974 Marriage Law in 2022 last year. See, *Mahkamah Konstitusi Republik Indonesia*, "Mahkamah Konstitusi Tolak Permohonan Beda Agama", 31 January 2023.

considered a representative of the Muslim Indonesian community. Thus, the Chairman of Da'wa and *Ukhuwah* (or Dakwah dan Ukhuwah) of the Indonesian Ulama of Council, Cholil Nafis, explained in the Constitutional Court that there are three aspects to the prohibition of interfaith marriage because it is contrary to the Marriage law. First, this statement is contrary to the Marriage Law of Indonesia No. 1/1974 concerning Marriage Article 2 paragraph (1) declared:

*"Marriage is valid if it is carried out according to the law of each religion and belief".*

The provisions of this article indicate that marriage is declared valid when it is established based on the religious law it embraces. In line with the above decision, the Presidential Instruction of Indonesia Number 1 of 1991 (*Inpres*) concerning the Compilation of Islamic Law article 4 stated:

*"Marriage is valid, if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage".*

Second, contrary to Islamic law which expressly forbids interfaith marriage. It is regulated and constructed in the Qur'ān, one of which is in Q.2:221. Third, contrary to the decisions of Islamic organizations in Indonesia, among them the Indonesian Ulama of Council, Nahdlatul Ulama (*NU*), and Muhammadiyah. NU had issued a fatwa on interfaith marriage at its 28th conference in Yogyakarta in late November 1989, affirming that marriage between two people of different religions in Indonesia was invalid. Meanwhile, the second largest Islamic organization, Muhammadiyah in the decision of the 22<sup>nd</sup> *Tarjih* Conference in 1989 in Malang, East Java, has issued a fatwa prohibiting marrying non-Muslim women or *ahl al-kitāb*. Additionally, Coordinating Minister for Human Development and Culture (*Menteri Koordinator Bidang Pembangunan dan Kebudayaan, PMK*), Muhadjir Effendy affirmed the Constitutional Court's (MK) decision on a lawsuit related to interfaith marriage issue considered to provide certainty of the question. Due to Effendy's response stating, "So, what has been in the 'gray space', the gray area or Interfaith marriage issue regarding the state law, which has become a polemic, has become a debate if it has been decided by the Constitutional Court to become brightly lit."<sup>137</sup>

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<https://www.mkri.id/index.php?page=web.Berita&id=18870&menu=2>

<sup>137</sup> See, Antara media, "MK's decision dispels uncertainty on interfaith marriage issue". 31 January 2023. <https://en.antaranews.com/news/271257/mks-decision-dispels-uncertainty-on-interfaith-marriage-issue>

In the absence of solutions, the government has turned the discussion on to legal experts, whose perspectives on the subject of interfaith marriage can be roughly split into four groups:<sup>138</sup> A First group consists of a large number of academics, most of whom identify with different groupings, who advocate for the outright ban on interfaith marriage in the nation. Any children born from such a marriage are illegitimate, regardless of the motivation behind it. Therefore, it is the duty of every citizen to refrain from entering into such nefarious contracts. The second group is a more pragmatic group of academics who contend that interfaith marriage is fundamentally illegal under marriage law and that in order to avoid it, one party to a marriage must declare their religion before the contract is signed. A third, very similar group is of the opinion that interfaith marriage ought to be permitted in Indonesia, provided that there is a pre-marital agreement between the spouses about the religion of the children and whether they ought to adhere to the husband's or the wife's religion. On the other hand, a fourth group, which now includes more academics, tends to see the situation from the standpoint of human rights. According to them, interfaith marriage is essentially a human right that every citizen of the nation is entitled to.<sup>139</sup> As such, the government is unable to pass legislation or enforce regulations that forbid interfaith marriage because it is a fundamental human right that every nation must uphold. Additionally, in accordance with the Universal Declaration of Human Rights, religious affiliation should not be a barrier to marriage. As a result, the Indonesian government cannot simply outlaw interfaith marriage because doing so would go against the universally acknowledged human rights principles.

The condition of the court's decision shows that the Marriage law in Indonesia does not accommodate interfaith marriages and is in line with the MUI's fatwa which declared the prohibition of interfaith marriages as a whole. While it is contrary predominantly to the view of classical scholars who allowed interfaith marriage in the case of Muslim men with scriptuary women. Although, it does not mean that MUI is inconsistent in issuing fatwas that must always be based on the Qur'ān and *hadīth*. But, it seems sociologically for getting the public interest (or *maslaha*) for the Muslim community in Indonesia.

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<sup>138</sup> Nani Soewondo et al., *Analisa Dan Evaluasi Hukum Tidak Tertulis Tentang Hukum Kebiasaan Dalam Perkawinan Campuran* (Jakarta: Proyek Pusat Perencanaan Pembangunan Hukum Nasional, Badan Pembinaan Hukum Nasional, 1991), 41–42.

<sup>139</sup> Gavin W. Jones, Chee Heng Leng, and Maznah Mohamad, *Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia* (Institute of Southeast Asian Studies, 2009), 38.

However, recently, the Supreme Court spreads Message on the regulation of interfaith marriage (Surat Edaran Mahkamah Agung, SEMA) issued on July 17, 2023, which seeks to harmonize all court decisions in various regions of Indonesia must be guided by the 1974 Marriage Law which regulates marriage rules, one of which is not to provide applications for registration of marriages between people of different religions or beliefs.<sup>140</sup> Upon the issuance of this Supreme Court Circular (SEMA), the Chairman of the MUI for Da'wah and Ukhuwah, Cholil Nafis, responded to this as a form of respect for the Supreme Court for the teachings of religions in Indonesia. In addition, Cholil emphasized that SEMA is in accordance with constitutional values that respect the teaching entities of their respective religions so the prohibition of different religions is a form of originality in maintaining the purity of interfaith teachings.<sup>141</sup> Even in addition to maintaining the purity of the teachings of each religion in Indonesia, the decision of the Supreme Court is considered to be a mutual agreement (*al-mithāq al-wathani*) that respects and accepts the differences of each religious believer in Indonesia.

### **3.5 Interfaith Marriage: between the MUI's Fatwa and Classical Islamic Discourse**

Although the majority of classical scholars as discussed above, agree that Muslim men may marry non-Muslim women provided that the woman must be of the *ahl al-kitāb* group, be it Jewish or Christian. As in the Hanbali madhab, they argue that the permissibility of Muslim men to marry non-Muslim women is based on the message of the Qur'ān which absolutely permits it in Q. 5:5, a view that refutes the views of other classical scholars who forbid the marriage of Muslim men under certain conditions or situations. In fact, for reasons of residence or territory led by non-Muslim leaders such as *dār al-harb* or *dār al-kufr* concluded that the law was *makrūh* to *harām*. This marriage fatwa is considered radical because it has violated the views of the majority of these classical scholars. In fact, the fatwa shows absolute *harām* and is considered an invalid marriage contract. However, according to classical scholars, the majority of interfaith marriages in the case of Muslim men marrying non-Muslims are considered to remain valid. Behind this MUI argument, there is an MUI perception that confirms that marriage in Islam is actually a sacred contract, whose orientation is not only the world but also hereafter oriented.

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<sup>140</sup> "JDIH Supreme Court of the Republic of Indonesia," accessed August 1, 2023, <https://jdih.mahkamahagung.go.id/index.php/legal-product/sema-nomor-2-tahun-2023/detail>.

<sup>141</sup> "Appreciation of SEMA Nikah Beda Agama, MUI: A Form of Respect for Religions," *Indonesian Ulema Council* (blog), July 19, 2023, <https://mui.or.id/berita/55079/apresiasi-sema-nikah-beda-agama-mui-wujud-penghormatan-ke-agama-agama/>.

This kind of Islamic legal paradigm was also put forward by many classical scholars who underlie the prohibition of different religions. Because if the orientation is that marrying a non-Muslim is permissible, then the marriage is purely worldly, and not based on the purpose of *ibāda* (or worship). The mechanism of this fatwa, as explained above, that there are similar reasons on which to base the prohibition of interfaith marriage put forward by contemporary scholars, namely, Mahmud Syaltut, the former sheikh of al-Azhar, has the view that prohibiting Muslim men from marrying non-Muslim women is due to concerns that Muslim men now actually follow the religion of women who in the context of globalization easily find women who Different countries, such as women who come from Western countries. Syaltut's view was that because of his concern about the weak faith of Muslim men, the fatwa he put forward was that Muslim men were forbidden to marry non-Muslim women.

On the other hand, Indonesia, since the 80s until now, has had many cases of interfaith marriage, due to the factor of Islamic-Christian relations that are in an unhealthy situation. In the Indonesian context, the interfaith marriage law stipulated in the 1974 Marriage Law is considerably contested and debated among citizens of Indonesia, but several times judicial review was submitted to change the rule, the court judge still rejected it, meaning in other words, interfaith marriage in Indonesia is considered an issue that is not legalized according to the marriage law, article 2. At least, on these two issues that underlie the MUI issued a fatwa banning different religions. It can also be said, therefore, that in addition to the MUI's argument based on the classical Muslim scholarly doctrine paradigm, the other argument is based on the 1974 Marriage Law as a means of supporting legitimacy for prohibiting Muslims from marrying non-Muslims, the argument also depends on the principle of fiqh, which states "*hukm al-hākim ilzāmun yarfa'u 'an al-khilāf*". Even before the creation of the marriage law, the Muslim community had also outlawed the Marriage Bill which was considered contrary to Islamic teachings, and demanded Suharto to reject articles that contradicted Islamic teachings. Therefore, as the division of Nani Soewondo's study, which concluded the views of Indonesian community groups on the issue of religious marriage, I think that MUI as a pragmatic representation of Islamic groups uses the legal basis of the marriage law as authentic evidence of the prohibition of interfaith marriage in Indonesia. And on the other hand, for community groups that do not agree with this MUI fatwa, the basis of the argument used is because for

them marriage contains aspects of freedom and human rights in choosing their life partners.<sup>142</sup>

The basic views of MUI in religious issues including interfaith marriage, according to my observation, will not be in accordance with the views of contemporary scholars whose thoughts are based on perspectives such as religious freedom, human rights, and other aspects derived from the concept of nation-state, which from these perspectives basis is needed to examine the particular religious issues that occur in Muslim society. Because MUI's point of view is very thick with the nuances of classical scholars' paradigms and cannot be separated from religious texts such as the Qur'ān, *hadith*, and classical literature proposed throughout history. such as the MUI's fatwa on the heresy of the Ahmadiyya group in 2005,<sup>143</sup> and the fatwa prohibiting pluralism, liberalism, and secularism in the same year.<sup>144</sup>

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<sup>142</sup> Sindy Cantonia and Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia," *Jurnal Hukum Lex Generalis* 2, no. 6 (2021): 510–27.

<sup>143</sup> Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom."

<sup>144</sup> Gillespie, "Current Issues in Indonesian Islam."

## CHAPTER IV

### CONCLUDING REMARKS

The institutionalization of the MUI is a modern invention not found in the early history of Islam. In the early days of the formation of Islamic law. The institutionalization of the ulama never took place because at that time the role of Muslim scholars was as individuals. The formation of several madhhabs in Islamic thought occurred around the 8th century after the death of Muhammad. Most of the early Muslim scholars of Islamic law – Hanafi, Mālik, Shafi'I, and Ahmad ibn Hanbal – stated that their thought should not be formalized specifically as a container of Islamic thought. Historically, fatwas were usually established because of the need for Muslim rulers for sources from whom to seek advice and answers on Islamic issues. However, the fatwa is not essentially legally binding on Muslims unless it is passed in a Sharia court, but thereafter can no longer be called a fatwa, passing *qadā'* (court decision). In the MUI's fatwa on interfaith marriage, it has actually been unified in the 1974 Marriage Law which regulates procedures or rules regarding marriage in Indonesia.

In the statute of the MUI Basic Guidelines, Islam is the main foundation of the organization. In principle, MUI follows *Sunni-Islam* understanding in every view of problems in religious issues. On the issue of marriage in Islam, it has been discussed that its basic record of acknowledging that marriage in Islam is a religious or sacred bond is described as '*al-mīthāq al-ghalīza*', the sacred bond promised by God. Marriage is considered part of the teachings of Islam. Among the complex issues concerning marriage in Islam is the issue of interfaith marriage in more detail, each school of Islamic thought has its own views, almost all of which hold views on interfaith marriage, especially the case of Muslim men with non-Muslim women is disliked or *makrūh* which according to some is forbidden (or *harām*). On the other hand, the modern view of scholars or reformers blocks the view of classical scholars and claims it is incompatible with modern challenges. It is necessary for scholars to interpret this case of interfaith marriage, which is permissible based on the reinterpretation of classical tradition discourse.

It might be said that patriarchal conceptions of marriage play a significant role in the traditional Muslim jurists' agreement to forbid interfaith marriage between Muslim women and men who adhere to the scripture. This notion is based on the normative idea of *qiwwāma* that is found in Qur'an 4:34. These include prohibiting Muslim women from marrying non-Muslim men who are regarded as being superior to them in terms of gender.

Thus, an important quote in the classical Islamic tradition about the rules of interfaith marriage in Islam can be concluded: "Interfaith marriage is forbidden, except in the case of a Muslim man marrying a scriptural woman."

The approach taken by classical Muslim jurists was to apply to the Muslim community the ideas of *sadd al-dharā'i* and the principle of *maslahah*. Because Muslims who marry non-Muslims are afraid to follow their beliefs, which can result in God's wrath, according to the passage of the Qur'an. This forms the foundation of traditional scholarly opinion when interpreting the interfaith marriage question. However, when using this methodology, scholars' opinions diverge at the level of the outright ban on interfaith marriage, as discussed in the discussion of the classification of the Islamic world, which results in a wide range of views among classical scholars and is the primary cause of this disagreement. Some agree with the division of *dār al-Islam* and *dār al-Harb*, and others disagree and produce different laws. They range from strictly prohibiting interfaith marriage for Muslim men to non-Muslim women to totally allowing such marriages.

The council issued a fatwa that was at odds with the majority of classical scholars, who view mixed marriage as a situation in which Muslim men were permitted to marry non-Muslim women because of a number of factors, including: 1. Caused by factors, socio-political dimensions at the time the MUI fatwa was first issued; and 2. Because it is based on state regulations governing marriage in Indonesia that are thought to not accommodate interfaith marriage for Indonesian citizens. According to its historical context, the MUI's founding was the outcome of a protracted struggle between secular nationalist groups and clerical forces over the relationship between religion and state, as well as the government's interest in Muslims. Atho came to the conclusion that the country had experienced at least three significant political events prior to the formation of the MUI: the 1971 general election, which saw the emergence of the secular party Golkar and the diminishing influence of Islamic political parties; the reduction of the number of Islamic political parties to one without still bearing the Islamic label; and the submission of a marriage bill, which was originally secular. It should be mentioned that, at least in the case of interfaith marriage, political considerations of Islam in Indonesia have an impact on the dynamics of the development of Islamic law in that country.

The main argument of this study is although the fatwa was against the majority of classical scholars' opinions, its fatwa was influenced by Islamic legal doctrines which construct the fatwa-making process. In terms of Islamic legal doctrines is a view of marriage in Islam is a sacred contract oriented not only toward the worldly purpose but also

hereafter ones. However, it can be justified because there is a concern for Muslims not to convert to religions other than Islam. Methodologically, MUI's fatwas are based on the principles of *sadd al-dharāi'* and *maslahah* for Muslims.

On the other hand, one might see that the E Ramos Petege case involves much more than only marital law-related issues after taking into account the arguments put up by the Supreme Court judges. Apart from the question of how to resolve the legally convincing facts on this matter, the Ramos case is also a good illustration of the judge's attempt to apply principles of national law in the process of making judgments. This is because theoretically, it is believed that the judge's mandate does not only involve solving problems based on existing normative regulations but also weakens how the principles of national law developed by the state can be implemented in every case that is brought to court. In this case, using the Marriage Law, in particular Article 2, as a legal basis for prohibiting interfaith marriages in Indonesia and taking into account the views of many groups, from parliament (or Dewan Perwakilan Rakyat, DPR), Government Representatives, Academics, to Representatives from Islamic Community Organizations namely the MUI.<sup>145</sup> Various perspectives were presented to the Judge who ultimately decided that the request for applicant E Ramos to reconsider Article 2 of the Marriage Law of 1974 was rejected. However, recently, the Supreme Court recently spread a Message on the regulation of interfaith marriage (Supreme Court Circular, *Surat Edaran Mahkamah Agung*, SEMA) which seeks to harmonize all court decisions in different regions in Indonesia must be guided by the 1974 Marriage Law. One of which regulates marriage rules is not to provide a request for marriage registration between people of different religions or beliefs.

Therefore, from the interfaith marriage cases that occurred in Indonesia, conclusions can be drawn from the perspectives of Indonesian community groups, specifically divided into 4: The first group, from religious circles, has the view that interfaith marriages must be completely banned in the country, regardless of the reason why it is illegal. The second group of scholars, the pragmatic group, shares the fundamental belief that one partner must adhere to the religion of one of the spouses or that interfaith marriage is illegal under the Marriage Law. Similar to the second group, the third argues that interfaith marriage should be permitted in Indonesia, provided that a pre-nuptial agreement based on the religion of one of the spouses is present, regardless of whether the woman marries the man or vice versa. The fourth contains a group of scholars who are of

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<sup>145</sup> See, the media of MK, regarding the various perspectives on interfaith marriage in Indonesia. <https://www.mkri.id/index.php?page=web.Berita&id=18870&menu=2>.

the view that interfaith marriage should be allowed by the state based on the perspective of freedom of human rights.

However, this thesis has tried to produce a kind of various perspectives regarding interfaith marriage in Islam as a case study of the making-fatwa of MUI in comparison to the classical and contemporary ones. This approach is based on my observations on the classical and MUI literature.

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