



Interfaith Marriage Between Muslims and Female Ahlul-Kitāb: MUI Fatwa and Preservation of the Shāfi‘i Madhab In Indonesia

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Abstract

The study investigates the rulings of Shāfi‘i’s madhab, which suggests a strict rule regarding the permissibility of interreligious marriage between a Muslim and a female ahl-kitāb, in contrast to other Imam madhabs that do not prohibit such marriages. However, Indonesians who embraced most of Shāfi‘i’s madhab forbade this marriage through an issued fatwa by the Majelis Ulama Indonesia (MUI). Despite extensive research on its arguments due to the historical roots of Shāfi‘i’s madhab ruling on connectivity, it is more concerned with the virtue and balance in society. This paper aims to analyze the prohibition of interfaith marriage between Muslims and female ahl-kitāb in Indonesia as a change in discourse that reinforces devotion to the Shāfi‘i madhab, which has historical roots connected to its rulings. This paper uses the qualitative method by comprehending classical Islamic law perspectives, the fatwa driven by the Indonesian Council of Ulama (MUI), and the historical trajectory of Imam Shāfi‘i schools in the early Indonesian era through textual analysis. The result found that the fiqh rulings “attracting benefits and preventing damage” held strongly by Majelis Ulama were not a clear affirmation of prohibiting marriage between Muslims and the female scriptures. Key findings indicate that the MUI released its prohibited fatwa on such marriage as a form-changing discourse to justify the continuation of the Shāfi‘i school of thought traditionally rooted in Indonesia to maintain the virtue and balance work in society. Future research should consider the increased case of interfaith marriages between female Muslims and non-Muslim males due to its relevancy, according to Fiqh al-Wāqi.’

Keywords: Ahlul-kitāb, interfaith marriage, fatwa MUI, Shāfi‘i madhab

Abstrak

Penelitian ini mengkaji hukum-hukum mazhab Syafi'i, yang menerapkan aturan ketat mengenai jika dibolehkannya pernikahan beda agama antara seorang Muslim dan seorang perempuan ahl-kitāb, yang berbeda dengan mazhab-mazhab Imam lain yang tidak melarang adanya pernikahan tersebut. Namun, masyarakat Indonesia yang sebagian besar menganut mazhab Syafi'i melarang adanya pernikahan tersebut melalui fatwa yang dikeluarkan oleh Majelis Ulama Indonesia (MUI). Meskipun telah dilakukan penelitian ekstensif terhadap argumen-argumen tersebut karena akar sejarah hukum mazhab Syafi'i yang memiliki keterikatan kuat dengan masyarakat Indonesia sejak dulu, keputusan mengikuti mazhab ini lebih kepada memperhatikan keutamaan dan keseimbangan dalam masyarakat. Makalah ini bertujuan untuk menganalisis larangan pernikahan beda agama antara Muslim dan ahl-kitāb perempuan di Indonesia sebagai perubahan wacana yang memperkuat kesetiaan kepada mazhab Syafi'i, yang memiliki akar historis dalam setiap keputusan hukumnya. Makalah ini menggunakan metode kualitatif dengan memahami perspektif hukum Islam klasik, fatwa Majelis Ulama Indonesia (MUI), dan lintasan historis mazhab Imam Syafi'i di era awal Indonesia melalui analisis tekstual. Hasilnya ditemukan bahwa keputusan fikih "menarik manfaat dan mencegah kerusakan" yang dipegang teguh oleh Majelis Ulama bukanlah sebuah penegasan yang jelas tentang pelarangan pernikahan antara Muslim dan perempuan ahl-kitāb. Temuan utama menunjukkan bahwa MUI mengeluarkan fatwa haramnya tentang pernikahan semacam itu sebagai wacana perubahan bentuk untuk membenarkan kelanjutan mazhab Syafi'i yang secara tradisional telah berakar lama di Indonesia sebagai bentuk penjagaan keutamaan dan keseimbangan dalam masyarakat. Penelitian di masa mendatang sebaiknya mempertimbangkan peningkatan kasus pernikahan beda agama antara perempuan Muslim dan laki-laki non-Muslim sesuai dengan relevansinya, menurut Fiqh al-Wāqi.

Kata Kunci: *ahlul-kitab, pernikahan beda agama, fatwa MUI, madzhab Syafi'i*

Introduction

Far from the colonialism era, Muslim societies have reached their peak by implementing their ruled activities based on sharia law. This was recorded by Ibnu Batutah once he visited the Sumatera, in the year 1345. He said that he watched over himself how the Sultan Malik Az-Zahir ruled his countries by bringing in great scholars from Isfahan and Shiraz to help him enforce the law according to the Shāfi'ī school of jurisprudence. Then the splendor of the sharia was established in Aceh until it continued in the Malacca Kingdom. Among the books of the Shāfi'ī school of thought, the "Book of Muhadhab" written by Sheikh Abu Ishaq Asy-Syirazi and the books written by Ibn Hajar al-Haithami became the basis for law in the Kingdom of Malacca. This continued until Aceh was founded for the second time in 1514.¹

¹ Hamka, *Studi Islam*, First, ed. Mardiaty (Gema Insani Press, 2020), p. p. 199–201.

Historically, since time immemorial, the Sultan, as the supreme leader at that time, had introduced the Shāfi‘i school of thought in Aceh, and it continued to be applied as the basic law in the Kingdom of Malacca, which recognized this school of thought as its legal basis law in that kingdom.

Abdul Hadi pointed out that, the Shāfi‘i madhab dominates the development of Islam in Indonesia. This madhab is also the most widely adhered to by Muslims in Southeast Asia, especially Indonesia, Malaysia, and Brunei. The Shāfi‘i madhab fiqh is used to solve various daily life problems, such as in worship, *mu‘amalah*, inheritance, and marriage. Scientific materials sourced from Fiqh books belonging to the Shāfi‘i madhab are a reference source in court decisions, especially in the chapter on marriage. In the past, the community-made courts in a simple form, namely in a mosque. After that, the old ‘porch court’ mosque developed into a more structured court by the time. The entry of European colonialism into Indonesia has contributed to the coloring of religious courts in Indonesia. Due to the colonial intervention factor, the court system in Indonesia was required to adapt to the colonial court system.² This confirms that the Sunni Shāfi‘i’s school of thought has long been rooted in Indonesia. The long history of the journey of Islamic law itself started with courts in the style of mosque verandas, after the arrival of colonialism, where old Islamic law was formulated into more personal law, especially in family matters. This includes Marriage Law. Moreover, Hadi & Hasan (2015) shared the same view, they mentioned that the VOC (Dutch East India Company) introduced Islamic law in the archipelago through the *Resoluti der Indische Regeering* on May 25, 1760, giving rise to the *Compendium Freijer*, a collection of Islamic law marriage and inheritance regulations. This was later enacted as *Algemene Bepaligen van Wetgeving* (AB) article 11 and *Regeering Reglement* (RR) 1855 article 75 paragraph 3.³ The VOC had previously acknowledged the existence of Islamic law regulating marriage and inheritance for Muslims. After the war, to preserve the existing madhab, Indonesian Muslims founded Islamic organizations to consolidate the ummah’s identity.

Historically, the Islamic religion symbolizes the dignity of Indonesian civilization. This is proven by R.A. Kartini, a national hero who fought for women's rights and education and became a symbol of women's emancipation in Indonesia in her letters known as "Out of Darkness Comes Light." The letter written on January 31, 1903 AD, was addressed to E.C Abendanon, Director of the Department of Education, Crafts, and Religion during the Dutch colonial government. She described that before the arrival of the Dutch Protestant colonialists, Christianity (Catholicism), a religion developed by the Portuguese colonialists, had no place in

² Abdul Hadi, “Fiqh Mazhab Syafi‘i dalam Peraturan Perundang-Undangan Tentang Perkawinan Di Indonesia, Brunei, Dan Malaysia (1971-1991)” (Dissertation, IAIN Sunan Kalijaga, 2001), p. 3.

³ Abdul Hadi and Shofyan Hasan, “Pengaruh Hukum Islam Dalam Pengembangan Hukum Di Indonesia,” *Nurani* 15, no. 2 (2015), p. 90–91, <https://doi.org/10.19109/nurani.v15i2.284>.

the hearts of the Indonesian people. After that came the Protestant faith, which became the religion of the Dutch colonialists. In the letter, she told the Protestant Zending (Catholic Mission) not to raise religious banners, let alone invite the Muslim population to convert to Christianity. On the contrary, she appealed to him to teach Islamic monotheism, a faith that was embedded in the hearts of the Indonesian people at that time.⁴ This explains that Kartini, the representative picture of the previous Indonesian Muslim society at that time, was against customary law and the politics of Christianization and Westernization propagated by the Dutch colonialists at that time. Besides, the Muhammadiyah Association saw an attempt at Christianization by the Dutch colonial government to defeat Islamic Sharia law by replacing it with customary law. Apart from that, Muslim youth were turned away from Islamic cultures, which were replaced by Western laws. To ward off colonialist-style political influence, several youth organizations were founded that adhere to the *ahlu as-sunna wal-jama'a* system based on Shāfi'i madhabs, such as *Nahdatul Waṭān*⁵ and the Perserikatan Ulama (Ulama Union).⁶ This further proves that the Shāfi'i school of thought has long been embedded in the history of Islamic laws in Indonesia before the arrival of the Portuguese and Dutch colonialists.

Aminah & Sugitanata wrote that Malaysia holds to the Shāfi'i madhab school as their Islamic law implementation, as evidenced in the Trengganu Inscription (one of the Malay's legal books), found in the Malay period as the first period of Malay Islamic law implementation, which was written in 1303 CE in the Javanese language. Apart from that, most of Malay Islamic law was derived from the Shāfi'i Fiqh school text, focusing on four important areas such as ownership law, maritime law, Islamic family law, and Muslims' obligations from their Islamic law implementation, as reflected in their Malacca Brief Law Book.⁷ This again proved that, in fact, the Shāfi'i school of jurisprudence had coexisted in Indonesia and Malaysia since the early period of time and coloured the Islamic family law of their holders, particularly related to marriage and Islamic family law rulings for Muslims. Miqat, et al. (2022) said that the family law in Indonesia refers to any general provision in legal relations between blood family relatives resulting from marriage, with some of its important aspects regulating the provisions on marriage law, parental authority, guardianship,

⁴ Ahmad Mansur Suryanegara, *Api Sejarah (Historical Fire)*, p. *Mahakarya Perjuangan Ulama Dan Santri Dalam Menegakkan Negara Kesatuan Republik Indonesia*, Edisi Revisi, ed. Nia Kurniawati (Penerbit Surya Dinasti, 2015), p. 288.

⁵ The scouting organization, currently Pemuda Muhammadiyah (Muhammadiyah Youth).

⁶ Ahmad Mansur Suryanegara, *Api Sejarah (Historical Fire)*, p. *Mahakarya Perjuangan Ulama Dan Santri Dalam Menegakkan Negara Kesatuan Republik Indonesia*, Edisi Revisi, ed. Nia Kurniawati (Penerbit Surya Dinasti, 2015), p. 458.

⁷ Siti Aminah and Arif Sugitanata, "Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia," *JIL: Journal of Islamic Law* 3, no. 1 (2022), p. 97–98, <https://doi.org/10.24260/jil.v3i1.556>.

pardon, absenteeism, and the marriage relationship itself.⁸ The family law is considered the legal system in Indonesia that developed altogether with the social development in the society.

Mochammad Rizky Eka Aditya et al. mentioned that marriage in Islam as defined by the Shāfi‘i madhab scholars, is a contract that uses the *nikāh* and *zawaj* pronunciations that contain the meaning of allowable sexual intercourse between married persons to have pleasure from his/her partner and to build a family relationship that is full of affection and tranquility in the name of Allah preached.⁹ Thus, this marriage definition shares the same breath with what Quraish Shihab pointed out that in the domestic life, the husband and wife are united through a strong bond through marriage. It is a religious attachment that mixes two people through a sacred activity, the marriage contract. This is called *an-nikāh*, which means the bond of physical and spiritual union, and termed *zawaj* because two different genders are united; in reality, the two of them are paired to move hand in hand with the same goal in life.¹⁰ Here, marriage is considered a sacred contract named *an-nikāh* and *zawaj* simultaneously. Both mean the unity of two different genders to walk together in good and pursue the same objectives and life goals, which Islam approves if they do not deviate from the essence of the oneness of Allah. Furthermore, marriage is needed as a protecting institution for women of all religions, in which her role is to become a man's partner in the gender and reproduction of children. The purpose of women's creation is for the companionship of men; therefore, building relationships between men and women should be regulated according to marital status relationships, which are socially accepted by all religions.¹¹ Marital ties legalize the relationship between men and women and the creation of children, which profoundly impacts society. This fact also prevails in the society of Muslims in Indonesia, who are the majority hold tightly with the Shāfi‘i madhab in Indonesia.

In referring to the legal system in Indonesia, Zezen Zaenal Mutaqin said that the Indonesian legal system was historically considered pluralistic. He divided it into three legal regimes: Islamic law, *adat* (customary) law, and the Dutch inherited national law. First, Islamic law focuses more on marital relationships, inheritance, waqf (Islamic endowment), *sadaqah* (alms charities), and Islamic business to Law No.3 Act, 2006. Second, *adat* law is concerned more with traditional disputes. Lastly, with some jurisdiction limits, the national laws inherited from Dutch laws

⁸ Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum Dan Syaria'h* 15, no. 1 (2023), p. 55, <https://doi.org/10.18860/j-fsh.v15i1.17461>.

⁹ Mochammad Rizky Eka Aditya et al., "The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach," *El-Usrah: Jurnal Hukum Keluarga* 6, no. No. 2 (2023), p. 458.

¹⁰ M. Quraish Shihab, *Islam & Kebangsaan: Tauhid, Kemanusiaan, Dan Kewarganegaraan*, ed. Mohamad Fauzi (Lentera Hati, 2020), p. 33–35.

¹¹ Mohammed Ali and Muhiyaddin, *A Comparative Study of the Religions of Today* (Vantage Press, 1985), p. 152.

covered all aspects not mentioned in the two former laws.¹² Overall, he said that all these three laws are a part of the legacy of colonialism. On the other hand, in my perspective, although the implementation of legal law in Indonesia was considered pluralistic and not purely Islamic, still, Islamic law concerning marriage life such as the avoidance of interfaith marriage carried by Muslim Indonesians.

Moreover, after the impact of colonialism, if not the abolition of the inherited law, the implementation of new laws, economics, and social practices that often imitate those of the colonizer's home region.¹³ Still, until today, we can see specific laws (not family matters law) adopted by Indonesian courts today, are driven from Dutch laws. This impact of colonialism indeed created a disturbance, where the development of colonial customary law discourse resulted in the reaction of Islamic resisted groups to customary law combined in unexpected ways. Hence, this contributed to the movement for the creation of a new 'national madhab' in the early Republic of Indonesia.¹⁴ Furthermore, Keener's paper focused on factors leading to national madhab in early Indonesian history, which was the Shāfi'ī's madhab emergence, which is not my study focus in this paper.

On the other hand, before the enactment of Marriage Law No. 1 of 1974, the legislation governing the issue of mixed marriages, previously issued by the Dutch East Indies colonial government and called *Regeling op de Gemengde Huwelijken* (Regulations on Mixed Marriages) as contained in Staatsblad 1898 No. 158, had been enforced between groups, but this was hampered after the enactment of the 1973 Marriage Law. Due to the principle as stated in article 11 paragraph 2, which states that "differences due to nationality, ethnicity, or country" by recalling the history of the 1973 marriage law related to the debate that origin, religion, belief, and propriety are not obstacles to marriage.¹⁵ Subsequently, thus never-ending debate has been replaced with the principle that interfaith marriage is prohibited in Indonesia.

When some areas of the specific Muslim family matters were not regulated by the 1974 Marriage Law, the uncodified Shāfi'ite Fiqh became the main reference for Muslim family laws at that time. Thus, the reforms of the 1974 Marriage Law were needed through the release of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) issued by the presidential decree in 1991. This KHI was another 1974 improved form of law, which bravely adopted all suitable reformed law,

¹² Zezen Zaenal Mutaqin, "Culture, Islamic Feminism, and the Quest for Legal Reform in Indonesia," *Asian Journal of Women's Studies* 24, no. 4 (2018), p. 427, <https://doi.org/10.1080/12259276.2018.1524549>.

¹³ William G. Oxtoby et al., *A Concise Introduction to World Religions*, Third, ed. William G. Oxtoby et al. (Oxford University Press, 2015), p. 63.

¹⁴ R. Michael Keener, "Indonesian Movements for the Creation of a 'National Madhhab,'" *Brill* 9, no. 1 (2002), p. 82.

¹⁵ Mochammad Rizky Eka Aditya et al., "The Problem of Interfaith Marriage in Indonesia: A Juridical-Normative Approach," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 2 (2023), p. 467, <https://doi.org/10.22373/ujhk.v6i2.20059>.

including *adat* norms and Islamic jurisprudence.¹⁶ The clear distinction between both in the matter of interreligious marriage was that the 1974 marriage remained silent on the issue, while KHI talked about its prohibition explicitly. Besides, since the 1974 Marriage Law was not sustainable for today's complex social condition and dynamics within the current community life, again, the law of 1974 should be amended, which resulted in the Marriage Law No. 16 of 2019. However, critical appraisal said the amendment of Law No. 16 of 2019 only changed the age limit of marriage due to the norms prevalent in today's society.¹⁷ Thus, it does not contribute much to the significance of the fatwa of MUI no. 4 in the year of 2005, which aimed to protect the peaceful domestic life of the Muslim society by prohibiting the interreligious marriage.

The Shāfi'ī School of Law Prohibits Interfaith Marriages between Muslims and Female Ahlul Kitāb.

This study discusses between the classical Islamic law perspectives on interreligious marriage, particularly Shāfi'ī madhab, the fatwa of MUI no. 4/MUNAS VII/MUI/8/2005, and the historical trajectory of Imam Shāfi'ī school of jurisprudence in the early period of Indonesia. Meanwhile, the previous studies mentioned that it is permissible for interfaith marriage between Muslim males and females *ahlul-kitāb* since all four madhabs never banned such marriage. In fact, based on the Shāfi'ī madhab, interfaith marriage is indeed *ḥarām* (forbidden) only limited to the female of the *ahlul-kitāb*, from Banu Isrā'īl, the descendants of the Prophet Jacob whose ancestors entered the religion before its distortion.¹⁸ Therefore, the study provides the argument sides of MUI Fatwa in relevance to contemporary and classic scholars and the historical trajectory of Imam Shāfi'ī schools, which affect Islamic law in Indonesia. Additional findings suggest it is implicated in maintaining virtue and balance in society, since this interfaith marriage case has been a debatable subject since 1980s.¹⁹ These occurrences have led to the historical roots of the embrace of Shāfi'ī madhab loyalty in Indonesia. Consequently, they contributed to Shāfi'ī followers prohibiting it through a fatwa by the Indonesian

¹⁶ Theresia Dyah Wirastrī and Stijn Cornelis Van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024), p. 216–19, <https://doi.org/10.15408/ajis.v24i2.38424>.

¹⁷ Edi Gunawan et al., "Interfaith Marriage of North Sulawesi Multicultural Community in Minority Fiqh Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024), p. 387, <https://doi.org/10.19105/al-lhkam.v19i2.8072>.

¹⁸ Syamsuddin Muhammad ibn al-Khātib Asy-Syirbīnī, *Mughnī Al-Muḥtāj* (Dārul-Ma'rifa, 1995), p. 250.

¹⁹ Bani Syarif Maula and Ilyya Muhsin, "Interfaith Marriage and the Religion–State Relationship: Debates between Human Rights Basis and Religious Precepts," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024), p. 795, <https://doi.org/10.22373/sjhc.v8i2.19479>; Ibnudin Ibnudin et al., "Reconstruction Interfaith Marriage Law In Indonesia: Relevance of Sociology Knowledge and Maqasid Sharia," *Al-Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan* 25, no. No.1 (2025), p. 71, <https://doi.org/10.30631/alrisalah.v25i1.1819>.

Ulema Council, while obscuring the primary reason for maintaining madhab loyalty to preserve social balance.

Preserving the Madhab Loyalty

Indonesia, as the Shāfi‘i Madhabs devotees put a high value on the perspective Fiqh based on this school of thought. The Shāfi‘i school of thought referred to Imam Abu Abdullah Muhammad bin Idris al-Qurashi al-Shāfi‘i, who was born in Gaza in 150 AH and died in 204 AH, at the age of 54 years. He studied with Imam Abu Hanifa (pioneer of the Hanafi Madhabs) and Imam Malik (pioneer of the Maliki Madhabs) and became the teacher of Imam Ahmad in Islamic jurisprudence (pioneer of Hanbali Madhabs). He also wrote the meaningful book on the science of Islamic jurisprudence, called “Ar-Risala.”²⁰ Since then, Imam al-Shāfi‘i has been considered as the meeting point in the Islamic sharia law between the old and new points of view.

An interfaith marriage is a marital tie in which one spouse belongs to a religion or religious tradition different from the other partner. Under Sharia law, such a marriage is considered invalid, since both partners must be Muslim and follow the religious terms and conditions of marriage, such as *ijab-qabul*, the guardian's presence, and the dowry.²¹ This marriage involves two persons from different religious faiths willing to form a family. This kind of marriage is thus unrecommended under Sharia law. Regarding the issue of interreligious marriage between Muslim males and females of *ahl-kitāb*, Imam Shāfi‘i (1983) pointed out that he did not recommend authentically marrying her/them. As ‘Abdul Majīd reported from Ibn Juraij, from Abū Zubair, he heard that when Jābir ibn ‘Abdilla was asked about the marriage of Muslim men with the Jewish and Christian women, he replied that he married them in the conquest of Kūfa including Sa‘ad ibn Abū Waqqaṣ since they found that Muslims females are very few in numbers (limited). Nevertheless, once they returned home, they divorced them. Jābir also added that those Jewish and Christian women were not inherited from Muslims and vice versa. Their females are permissible for Muslim men to marry, but Muslim females are prohibited for their males.²² Therefore, Imam Ash-Shāfi‘i disagreed with the permissibility of the ruling that marriage between a Muslim male and female *ahl-kitāb*. Based on the narration by ‘Abdul Majīd, Ibn Juraij, from Abū Zubair, found that the reason behind Jābir ibn ‘Abdilla and Sa‘ad ibn Abū Waqqaṣ’s marriage with them was due to the limited number of female Muslims at that time. However, when they went back home, they separated them. Hence, the author argues that what Jābir

²⁰ Meirison Meirison et al., “The Dynamics of Islamic Jurisprudence in The Eyes of Contemporary Muslims,” *El-Mashlahah* 12, no. 1 (2022), p. 75, <https://doi.org/10.23971/elma.v12i1.3939>.

²¹ Mohd Norhusairi Mat Hussin et al., “Interfaith Marriage Among Muslims in Singapore,” *Al-’Adalah* 22, no. 1 (2025), p. 2, <https://doi.org/10.24042/adalah.v22i1.23667>.

²² Abu Abdullah (150-204 AH) Muhammad bin Idris Al-Shafī‘i, *Al-Umm (The Mother)*, p. 2nd ed. (Dār al-Fikr, 1983), p. 7.

ibn ‘Abdilla says is that ahl-Kitāb women were not inherited from Muslims and vice versa, which became the standpoint for Imam Shāfi‘i to detest (forbid) such deeds. Although Baihaqi's narration, that he, ‘Umar, Uthman, Ṭalḥa, Hudzaifah, dan Ibnu Abbas, who narrated on the permissibility of such marriage. However, ‘Umar ibn al-Khaṭṭāb detested it.²³ For such, the Companion of the Prophet, ‘Umar, disliked the marriage between Muslim men and the female of *ahl-kitāb*.

Moreover, Ibn ‘Umar, when being asked about the marriage between Muslim and female *kitābiya* from Christian or Jews, said Allah forbids polytheistic women for believers; he did not even know of anything more significant in *shirk* than for a woman to say: Her Lord is Jesus, not his servant.²⁴ Since those female scriptures acknowledged the Prophet Isa as a god, confirmedly, they are polytheists and are not allowed to marry Muslims.

Furthermore, according to Arrafii wrote that Shāfi‘i madhab viewed this kind of interfaith marriage as legal *makrūh*. Additionally, three rules may change the marriage maturity over time: 1) a Muslim man who wants to marry a scriptural woman but has no motive to convert her to Islam, 2) he wants to marry her but has already found a Muslim woman who suits him, and 3) a Muslim man who commits adultery with a scriptural woman. Due to *maṣlahah* to maintaining Islamic norms, these three conditions of marriage with *kitabiyah* are acceptable.²⁵ Hence, this kind of marriage is permissible due to the three conditions based on the Shāfi‘i school of thought in Arrafii's perspectives. Moreover, I strongly believe the Shāfi‘i madhab added some strict requirements to allow this marriage. The eligible female of *ahl-kitāb* to be married limitedly from the ancient Christian or Jewish lineage before Islam.

In the chapter on marriage: the Lawful and Unlawful Marriage from Disbelievers Women, there are three groups of female disbelievers highlighted in this point: 1) those females who do not possess any scripture books or any similar book such as sun and idol worshippers, 2) those who do not have any relevant scripture book such Magian people, and 3) those who had been revealed scripture books such as Jews and Christians. For the group no. 1 and 2 confirm that their women are prohibited from marriage to Muslim males since they are Disbelievers. In the group of no.3, the female slaves are also prohibited. As for what is meant by the two Books of People (The Book was sent down to two peoples before us),²⁶ the two groups were a) the Jews from Ya‘qūb blood lineage and b) the earlier Christians who lived in Shām. Furthermore, Asy-Syirbīnī cited Al-Qaffal who differentiates between scripture women and other fellow scripture women. For him, the flaw of a biblical

²³ Misbah and Abu Faiq, *Imam Asy-Syafi'i Al-Umm* (Pustaka Azzam, 2014), p. 30.

²⁴ Sayyid Sābiq, *Fiqhus-Sunnah*, Nizāmul usrah-al Ḥudūd wal-Jināyāt (Dār al-Fikr, 1995), p. 2:70.

²⁵ Muhammad Arrafii, “A Study of Fatwa-Making: Indonesian Ulama Council (Majelis Ulama Indonesia, MUI) and Classical Islamic Discourse on Interfaith Marriages” (Thesis, Universitas Islam Internasional Indonesia (UIII), p. 2023), p. 27.

²⁶ Al-Qur‘an (6), p.165.

woman is her infidelity, while for other groups, it is not only her infidelity that is her defect but also the distortion of her religion. Therefore, those who are allowed to be married from female Kitābiya here means those who are from either Banu Israel, who came from the descendants of Ya‘qūb, or those who believed in Christianity before the advent of Islam whose ancestral religion was traced to the religion of the Prophets Moses and Jesus. The original root word (Isra) comes from Hebrew, ‘*abd*, meaning worshiper, and (El) is the name of Allah. If their genealogy is lost, it is forbidden for Muslim men to marry them.²⁷ This argument explicitly mentions that not all scriptural women are permissible only through conditions related to the purest people's books.

Again, Asy-Syirbīnī quoted Imam Ash-Shāfi‘ī, wrote that the freed female scriptures were permissible to marry if they were the followers of two holy books, the Torah and the Gospel. Besides, he also wrote that the people of Sabeian and Samaritan, who are Jewish and Christian, were permissible to marry if they shared the same perspectives on the main issues of permissibility (*ḥalāl*) and prohibition section (*ḥarām*) based on their books. For him, marrying them is permissible only if they have the same points in their revealed book.²⁸ However, based on this madhab ruling, those allowed to marry by Muslim men are those who consistently hold the teachings of the Torah and the Gospel and agree on the permissibility and prohibition in their guidance book that is shared by Muslims, too.

The female of *ahl al-kitāb* meant by Imam Shāfi‘ī also described by Sābiq. Sayyid Sābiq mentioned that they are the ones who believe in Allah and worship Him, the Prophets, and the judgment day. They also follow the commandment of good deeds and forbid the bad ones. The clear distinction between them and other Muslim believers is that they believe in the prophecy of Prophet Muhammad as the last messenger of Allah as they believe in all the messengers of Allah from the previous prophets, in general.²⁹ In describing the differences between female *ahl al-kitāb* and the polytheist women, Sayyid Sābiq pointed out that those Kitābiya females are not much different from Muslims, who also believe in Allah and worship Him as the Only God, His Prophets, the last day, do command good and forbid the bad. The tremendous fundamental difference between the Believers and *ahl al-kitāb* is the belief in the prophethood of Muhammad. Moreover, whoever trusts in general prophecy, nothing prevents her from believing in the prophecy of the Seal of the Prophets except due to ignorance of what the last prophet brought. From these hints, it is very difficult to find any female scripture today from either Christians or Jews who believe in the prophecy of the Prophet Muhammad, and if such a woman is still found in the world, of course, she must be converted to Islam.

²⁷ Syamsuddin Muhammad ibn al-Khāṭib Asy-Syirbīnī, *Mughnī Al-Muhtāj* (Dārul-Ma‘rifā, 1995), p. 250.

²⁸ Syamsuddin Muhammad ibn al-Khāṭib Asy-Syirbīnī, *Mughnī Al-Muhtāj*, p. 31.

²⁹ Sābiq, *Fiqhus-Sunnah*, p. 71.

Furthermore, according to Imam Shāfi‘i’s book “Al-Umm,” Misbah (2014) wrote that, it is prohibited for Muslim men to marry Arabian Christian females who followed the religion of *ahlul- kitāb* due to their previous belief as *Hanifiyya* (the religion of the Prophet Abraham). They were misguided by idol worship, which caused them to be out of their *Hanifiyya* religion. Their religious transformation from *Hanifiyya* to *kitābiya* is currently occurring. It means that they were not as a strong holder of faith in the Torah and the Gospel.³⁰ For that reason, marriage with them is not permissible. The same case also goes on for non-Arab Jewish and Christian females whose ancestors were idol worshippers since they are not pure of *ahlul-kitāb*, who strongly follow the Torah or the Gospel.³¹ Therefore, it is clearly stated that Arabian Christians who were followers of the Prophet Abraham but then moved to become either Jews or Christians and non-Arab females whose ancestors were idol worshippers and only embraced Christianity after the advent of Islam, marriage with Muslims prohibited based on the Imam Ash-Shāfi‘i’s madhab. Their disbelief in the prophecy confirmed their Christianity embraced after the Prophet Muhammad SAW was sent as the last messenger of Allah on earth, who completed all the missions of the previous prophets on earth. This fact, again, the unlawful *kitābiya* who are not permitted to be married according to Shāfi‘i madhab in Islam.

Again, based on the Shāfi‘i’s school of thought, another prohibited marriage for Muslim males is marriage with a woman in Indonesia if the Christian religion is originally a product of colonialism. Since the arrival of Portuguese colonialism to the Nusantara (Indonesian Archipelago) in 1511 AD, they have carried the 3G mission (Gold, Glory, and Gospel), then continued with Dutch colonialism with the same goal, not only for profitable trade transactions, or territorial expansion but also for the mission of spreading Christianity. This prohibition prevailed due to their embrace after the arrival of Islam.³² This confirms the fact that Indonesia's experience with Islam has also been through the struggle against European colonialism. This evidence is based on the fact that Dutch imperialism colonized Indonesia for 3.5 centuries, followed by Japanese military occupation for the next 3.5 years. However, this was defeated by Indonesia's patriotic spirit through Islamic teachings, "love for one's homeland is part of belief (faith)."³³ European colonialism started to emerge in Indonesia in the 10th century of Hijriyah and stayed until the middle of the century, interrupted by the Japanese military occupation for about 3.5 years. Hence, the women who embraced Christianity due to the impact of colonialism were confirmedly not a part of eligible women Christians. They are not

³⁰ Misbah and Faiq, *Imam Asy-Syafi'i Al-Umm*, p. 31.

³¹ Misbah and Faiq, *Imam Asy-Syafi'i Al-Umm*, p. 31.

³² Al-Amin. (2016, 5 December). Sejarah Agama Kristen di Indonesia yang banyak orang tidak tahu - Ust Adi Hidayat, Lc. [Video]. Youtube. <https://www.youtube.com/watch?v=GHS5XW3z-fY>. (Accessed on 3 December 2024).

³³ Roeslan Abdulgani, “The Dynamics of Islam in Indonesia in the Rise of the Islamic World of Today,” *Studia Diplomatica* 33, no. 6 (1980), p. 696.

allowed to be married to Muslim men in Indonesia, the holder of Shāfi'ī's school of thought.

From this, I knew the standpoint from the Shāfi'ī's school on interreligious marriage, and what about the other madhab opinions? Marghinani (1431H/2010), the Hanafī madhab, viewed that based on this madhab ruling, it is permissible for Muslims to marry women of the Book, based on the Qur'ān.³⁴ However, idolatrous women, it is not allowed to marry them, as Al-Baqarah (2): 221³⁵ said.³⁶ Likewise, if a Muslim marries a non-Muslim with the witness of non-Muslims, it is permissible, according to Abu Hanifa and Abu Yusuf.³⁷ Therefore, based on the Hanafī madhab, it is allowed for Muslims to marry with female *kitābiyah*. Moreover, the witness of non-Muslims in such marriages is also acceptable.

On the other hand, based on Maliki madhab rulings, marriage with ahl *al-kitāb* in *dār al-Islam* is detestable. Moreover, it will be more detestable if it occurs in *dār al-ḥarb*.³⁸ Based on this Madhab Maliki, interfaith marriage with female *ahl al-kitāb* is permissible even though it is not recommended. This Maliki madhab shares the same perspective as the Shāfi'ī madhab; both disliked such a deed as what the Prophet Companion, Umar, detested.

In interfaith marriage, Ibnu Qudāma (1997) cited Ibnu Qutaida, the scholar of Hanbali school rulings, put it as a chapter on marrying polytheists. According to this madhab, marriage with *ahl al-kitāb* (infidels) is valid; it would be more approved if they convert to Islam or use Shariah law to be applied as their law. If the woman is in a condition where it is permissible to be married immediately, do not consider the nature and manner of the contract marriage. However, we should consider that if the woman is of a quality permissible for him to initiate marriage, the marriage is approved, too, as long as the woman is not forbidden by lineage or reason.³⁹ According to Hanbali madhab, interfaith marriage is also permissible.

³⁴ “And chaste women from among those who were given the Book” (Al-Mā'ida: 5).

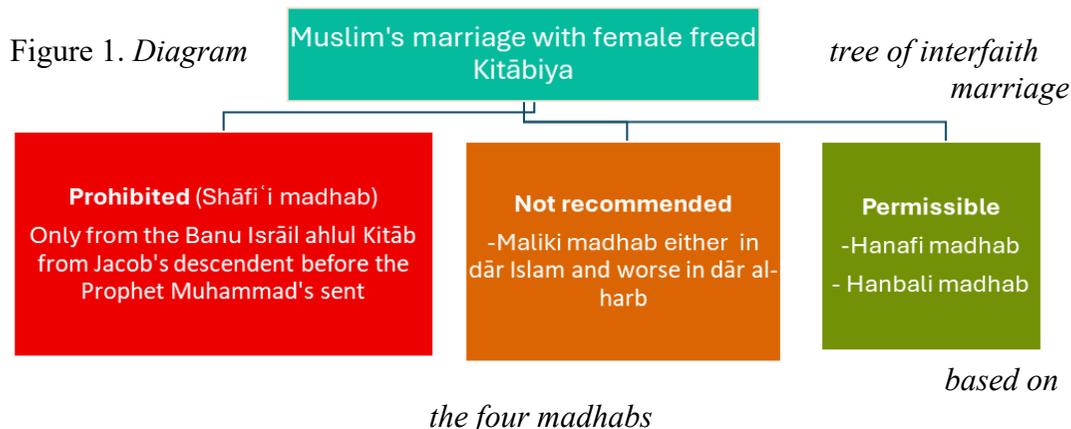
³⁵ “And do not marry polytheist women until they believe.”

³⁶ Ali bin Abi Bakr bin Abdul Jalil al-Marghinani, *Al-Hidāya Fī Sharh Bidāyat al-Mubtadī*, ed. Talal Youssef (Dār Iḥyā'ut Turāth al-'Araby, 1431/2010), p. 188.

³⁷ *Ibid.*, 186.

³⁸ Khalīl ibn Ishāq Al-Mālikī, *Mukhtaṣar Khalīl: Fī Fiqh Imām Dār al-Hijra al-Imām Mālik Bin Anas Raḍiyallahu 'anh*, 2nd ed., ed. Ṭāhir Aḥmad Az-Zāwīy (Dār al-Madāril al-Islāmīy, 2004), p. 104.

³⁹ Ibnu Qudāma, *Al-Mughnī*, ed. 'Abdullah 'Abdul Muhsin At-Turkī and 'Abdul Fattah Muhammad al-Hulwi (Dār 'Ālimil Kutubi liṭ-Ṭabā'a wa-an-Nasyr wa at-Tauzī', 1997), p. 3:10.



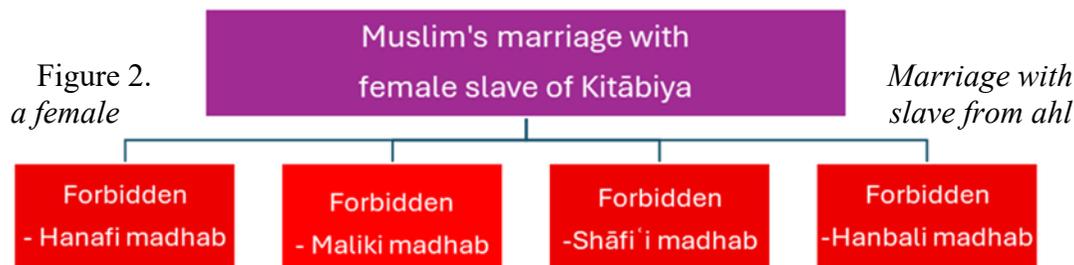
(Marghinani, 2010, Al-Mālikī, 2004; Ibnu Qudāma, 1997, Ash-Shāfi'i, 2014)

Marrying free women of scripture has been discussed previously. And what about marrying the female slave among them? Regarding the marriage with the female slave of them, based on the other three madhabs except for those *kitābiya* women who acknowledge the Prophet Isa as their god. They, *fuqaha* (fiqh scholars), differed in opinion as to replacing the slave *kitābiya* women with marriage, but they agreed on replacing it with the right ownership.⁴⁰ The verses (And do not marry polytheist women until they believe) are considered its generality, while the verses (And chaste women, except those your right hands possess) mean the captive woman (specific); still require generality either the female be polytheistic or of the Book women. However, the majority are in favor of prohibiting it, and with permissibility, Tawus and Mujahid said, on the marriage of captive women. The majority came to support the permissibility of marrying free women of *kitābiya* according to the contract, and (chaste women among those who were given the Book) is specific. Allah said (And do not marry polytheist women until you believe) shows the generality of either polytheistic or of the Book women. Therefore, the majority eliminated the specific from the general, and those who prohibited made the general abrogate the specific (the doctrine of some jurists).

However, they do not differ in substituting the woman of the Book for marriage based on the analogy (*qiyas*), which said that the free woman requires the permissibility of her marriage. Regarding marrying the female slave of the Book, it is not permissible to marry them. Based on the analogy, there are two opinions here: 1) marriage is permissible by right-handed ownership if its origin is Muslim women, and 2) it is not permissible to marry a Muslim female slave by marriage except with a condition (by right-handed ownership). Based on the consensus, for captivity

⁴⁰ Ibnu Rushd Al-Ḥafīd, *Bidāya Al-Mujtahid Wa Nihāya Al-Muqtaṣid* (Dār Al-Kutub Al-Islaāmiya, n.d.), p. 1-33.

reason, it is permissible for an unmarried woman to remain alone.⁴¹ Additionally, Imam Malik prohibits marrying the female slave *kitābiya*. Hence, Imam Malik and Imam Shāfi'ī forbid Muslim men from marrying the female slave *kitābiya* as found in Al-Mā'idah verse 5.⁴²



al-Kitāb (‘Uwaidah, 1998)

Therefore, on the issue of marriage between Muslim men and female polytheists, all four madhab schools in Islam agreed to prohibit it. Besides, it is not permissible for a polytheist to be the mother of believers. Therefore, to put water (sperm) into the womb of female Muslims is more honorable rather than putting it into the womb of an infidel.⁴³

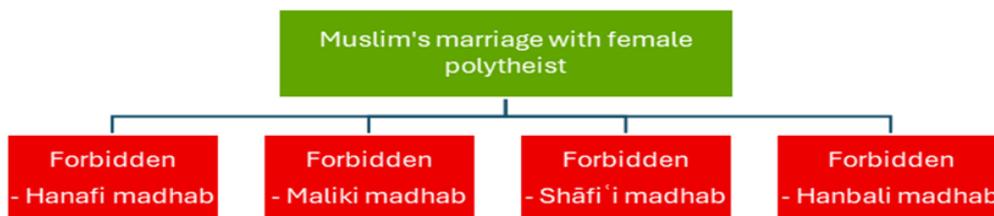


Figure 3. *Marriage between Muslim males and female polytheist* (Marghinani, 2010, Al-Mālikī, 2004; Ibnu Qudāma, 1997, Ash-Shāfi'ī, 2014)

Since ancient times, when Hinduism, Buddhism, Christianity, and Islam entered the archipelago, marriage law has been regulated according to written and unwritten laws (customary law). During the Dutch colonial era, when the French Revolution broke out in the 17th century, the Kingdom of the Netherlands had to submit to the European legal system, namely a codification-based system. Hence,

⁴¹ Ibid., 34.

⁴² Kamil Muhammad ‘Uwaidah, *Fiqh Wanita Edisi Lengkap*, Edisi Indonesia (Pustaka Al-Kautsar, 2003), p. 389.

⁴³ Syamsuddin Muhammad ibn al-Khātib Asy-Syirbīnī, *Mughnī Al-Muhtāj* (Dārul-Ma‘rifah, 1995), p. 249.

the Dutch legal system “*Burgerlijk Wetboek*” must apply to everyone in Indonesian territory. At that time, the Dutch Kingdom also used a split politics tactic, forcing the population into three groups. Namely, the European Group (Europeans and Japanese), the Foreign East Group (Chinese and other than Chinese), and the Bumiputra/Indigenous Group. Problems often occur when Dutch law regulating marriage provisions is forced on the native population. This results in chaos, so many provisions become more challenging to comply with. Since then, the marriage laws that apply to natives are Islamic and customary. Even though Indonesia became independent in 1945, the codification system derived from colonial products is still used today, namely Law Number 1 of 1974 concerning Marriage. The problem did not stop there; new problems, such as interfaith marriages, emerged. This has become controversial again since the law was enacted.⁴⁴ From the past until today, interfaith marriages continue to be a controversial issue faced by society. From history, we can see that the ruling of Islamic law has prevailed in Indonesia since the colonialization era. Therefore, Indonesia, as the Shāfi‘i madhab devotees, has been consistently proclaimed by Indonesian people as their true religious method (madhab) for a long time.

Concerning the interfaith marriage issues, the Majelis Ulama of Indonesia issued its fatwa number 4/MUNAS VII/MUI/8/2005,⁴⁵ 1. Marriage between different religions is haram and invalid. 2. Marriage between Muslim men and *ahlul-kitāb* women, according to the MUI official statement, is haram and invalid. The increasing cases of interfaith marriages in Indonesia have sparked debate and unrest among Muslims. Apart from that, with the emergence of justifications in the name of human rights and welfare, some parties who defend this matter, the MUI, feel it is necessary to issue a fatwa to create and maintain a peaceful married life. By referring to several verses of the Qur'an, including al-Nisā (4)⁴⁶: 3, al-Rūm (30): 21⁴⁷,

⁴⁴ Syaiful Anwar and Muhammad Yunus, “Perkawinan Beda Agama Antar Warga Negara Indonesia Di Indonesia Sebagai Diplomasi,” ed. Ngimadudin et al. (Kampus A STAI Bumi Silampari, 2020), p. 116–17, <https://doi.org/10.37092/prosidingsid.v1i1.181%20%7C>.

⁴⁵ Fatwa Majelis Ulama Indonesia Nomor: 4/MUNAS VII/MUI/8/2005 Tentang Perkawinan Beda Agama. <https://mui.or.id/baca/fatwa/perkawinan-beda-agama>. (Accessed on May 25, 2024).

⁴⁶ “Marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them) then only one, or a (captive) that your right hands possess.”

⁴⁷ “And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts).”

al-Taḥrīm (66): 6⁴⁸, al-Mā'ida (5): 5,⁴⁹ Al-Baqara (2):221,⁵⁰ al-Mumtaḥana (60): 10⁵¹ and al-Al-Nisā (4): 25.⁵² Besides the consideration of the hadith of the Prophet, which is mentioned for conditions in marrying women, the religious factor is the most concern. Thus, it also prompted the MUI to issue this fatwa. For that reason, a similar religion between a husband and wife will effectively achieve the life of marriage as one goal. It was narrated from Abu Hurairah that the Prophet said: “A woman may be married for four things: Her wealth, her lineage, her beauty, or for her religion. Choose the religious, may your hands be rubbed with dust (i.e., may you prosper).⁵³”

Lastly, the Fiqh ruling (*qawā'id fiqhīyyah*) which said, “Preventing disasters takes priority rather than attracting benefits” (ذُرُّ الْمَقَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ). This rule is a Fiqh rule that is very well-known among *fuqahā'* (fiqh experts). Where it became a reference for many Fiqh issues, this was also done by 'Izuddin bin 'Abd al-Salam (d.660 AH). He was the first Shāfi'iyya scholar who compiled the *qawā'id fiqhīyyah* book "*Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*." He returns all Fiqh issues to this rule. It is, namely, attracting benefits and rejecting *mafsadat* (damage). For him, life in this world and the afterlife may have benefits that, if violated, will destroy both. Likewise, vice versa, the life of this world and the afterlife will also be damaged if they continue to be carried out, damaging the population. To obtain, at least, most of the benefits of this world and the hereafter by carrying out the causes that are *dhann* or strong suspicion.⁵⁴ The strong suspicion here is to avoid interfaith marriages to bring benefits to the Muslim population in Indonesia and to prevent damage caused by the consequences of interfaith marriages to create peace in the household. By referring the issue of differences in religious marriages to the rules of Fiqh, the MUI, with its fatwa, prohibits and considers marriages between different religions to be invalid and forbidden (*ḥarām*).

⁴⁸ “O ye who believe! Save yourselves and your families from a fire whose fuel is men and stones, over which are (appointed) angels stern (and) severe, who flinch not (from executing) the Commands they receive from Allah, but do (precisely) what they are commanded.”

⁴⁹ “This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time when ye give them their due dowers, and desire chastity, not lewdness.”

⁵⁰ “Do not marry Unbelieving women until they believe: A slave who believes is better than an unbelieving woman. Even though she allure you. Nor marry (your girls) to unbelievers until they believe: A man slave who believes is better than an Unbelievers even though he allure you. Unbelievers do (but) beckon you to the fire. But Allah beckons by His grace to the garden of (Bliss) and forgiveness. And make His signs clear to mankind: That they may receive admonition.”

⁵¹ “And do not hold fast to the infidels' ties.”

⁵² “If any of you have not the means wherewith to wed free believing woman, they may wed believing girls from among those whom your right hands possess.”

⁵³ Sunan Ibn Majah, Chapter: Marrying a religious woman, Vol. 3, Book 9, Hadith 1858 (English translation), p. <https://sunnah.com/ibnmajah/9> (Accessed May 25, 2024).

⁵⁴ Ade Dedi Rohayana, *Ilmu Qawa'id Fiqhīyyah: Kaidah-Kaidah Hukum Islam* (Gaya Media Pratama, 2008), p. 262.

Again, according to Hadi who cited Hooker noted that there were three historical stages in the development of Islamic law in Indonesia, particularly the first engagement with the Sunni madhab, first, the Islamic law exists to accommodate local regulations, as found in legal documents in Java and Sumatra. Second, during the colonial period, Islamic law in Indonesia was formulated to define European terms, whereas sharia became Muslim personal law, which was limited to laws regarding family matters only. To end, in the post-war period, at this level, Indonesian Muslims tend to Islamize the law more strongly by bringing back classical ways of thinking about the process of applying the law and emphasizing the substance of the law. Then, in the 18th century, a wave of Islamic reform and modernization entered Indonesia. However, the roots of the Sunni madhab tradition, especially the Shāfi‘i’s madhab, are firmly entrenched so that the Indonesian Islamic community continues to uphold the scientific traditions of this madhab. To maintain its madhab from the distortions of modernization, traditionalists consolidated it in organizational platforms, such as Nahdatul Ulama, Ijtihad Ulama Minangkabau, and the Islamic Tarbiyah Association.⁵⁵ From this fact, I strongly argued that from the start, Indonesian Muslims have tried to maintain the Shāfi‘i’s madhab, which has been deeply rooted in their lives and has not gone away over time. One example of the application of law that is closely related to the Shāfi‘i Madhab system is marriage law.

Furthermore, according to the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage in article 1 and article 2, paragraph 1.⁵⁶ Article 1 mentioned that marriage is more about the physical and spiritual bond between husband and wife, which forms a family for achieving the same goal for God’s sake. Moreover, in article 2, paragraph 1 mentions that marriage is valid if it abides by laws, religion, and beliefs. On the other hand, Egi Taufik (2022) believes that the Marriage Law No. 1 of 1974 is less firm and unclear in regulating the law on interfaith marriages in Indonesia. This is because the provisions for cross-faith and religious marriages are not explained in detail in these regulations. Apart from that, there is also an interpretation that states that inter-religious marriage violates Law No. 1 of 1974,⁵⁷ article 2 paragraph 1, and article 8.⁵⁸ This fact shows that this regulation needs to be supported by other firm law that describes precisely the

⁵⁵ Abdul Hadi, “Fiqh Mazhab Syafi‘i dalam Peraturan Perundang-Undangan Tentang Perkawinan Di Indonesia, Brunei, Dan Malaysia (1971-1991)” (PhD Thesis, Institut Agama Islam Negeri Sunan Kalijaga, 2001), p. 3.

⁵⁶ Marriage Law 1974: Marriage is valid, if it is carried out according to respective laws religion and beliefs.”

⁵⁷ Marriage is prohibited between two people who are related by their religion or other regulations. In force, marriage is prohibited.

⁵⁸ Egi Tanadi Taufik, “Meneraca Perkembangan Kasus Nikah Beda Agama Di Indonesia: Sebuah Refleksi Hermeneutis,” in *Fikih Humanis: Meneguhkan Keragaman, Membela Kesetaraan Dan Kemanusiaan*, ed. Noorhaidi Hasan and Maufur (Pascasarjana UIN Sunan Kalijaga Press & Norwegian Centre for Human Rights, 2022), p. 342–44.

framework of Muslim communities who have firmly rooted their Sunni madhab, particularly Shāfi'i schools, in domestic life. Therefore, other clear regulations on interfaith marriage must be made to preserve society's values.

Besides, Arifin wrote that the concept of *ahlul-kitāb* women no longer exists because, in fact, the teachings of Catholic Christians and Protestants who follow the Christian religion are already distorted and no longer relevant. Therefore, according to the laws in force in Indonesia, interfaith marriages are prohibited. This is also under the prohibitions of legal religions in Indonesia, such as Catholic Christianity, Protestantism, Buddhism, Hinduism, and Confucianism, according to Law No. 1 of 1974 and the Compilation of Islamic Law. Apart from that, there are also dangers caused by interfaith marriages, such as being vulnerable to divorce, the existence of a double concept in the head of the family, and the emergence of parties who suffer losses if undesirable things happen in the marriage. Therefore, the ulama in Indonesia, starting from the MUI, Nahdatul Ulama (NU), and PP Muhammadiyah, decided that interfaith marriages are *haram* and invalid, also marriages between Muslim men and *ahlul-kitāb* women, according to their official statement, are forbidden and not legitimate. This is more considered from the perspective of "*Saad az-Zari'ah*" where religious marriage is prohibited for fear that it could damage the existence of one's faith.⁵⁹ Consequently, it is impossible to create a peaceful (*sakīna*) family full of love (*mawadda*) and mercy (*rahma*) if each partner has different beliefs. Due to this reason, MUI released the fatwa on the prohibition of interfaith marriage not only between female Muslims and non-Muslim males but also the Muslim men with female *kitābiya* to protect and maintain the society and preserve the roots of Shāfi'i schools believed by Muslims since long time ago.

However, what has been forbidden by MUI is also in line with the *maqāṣid al-Sharī'a*'s perspective. *Maqāṣid al-Sharī'a*, indeed, emphasize justice and protection for all parties involved in a marriage relationship.⁶⁰ And interfaith marriages are not permitted in Islam because they conflict with the five concepts of *maqāṣid al-Sharī'a*: (1) maintenance of religion, where religion is a guide to life; if it advocates something, then it is definitely for a better life in the future. (2) Maintaining the soul; marrying different religious principles certainly have different teachings. Where the end of these differences will give birth to contradictions within them. Then, how can the soul be maintained if it continues to experience differences? (3) Maintenance of *'aql* (reason): Marrying a different religion certainly contaminates (*'aql*) reason by the doctrines of lust (love). This can undoubtedly hinder the use of reason well or even better. The worst thing is that the perpetrator can be seduced by the temptation of heresy (apostasy) because he cannot use his

⁵⁹ Zainal Arifin, "Perkawinan Beda Agama (Interfaith Marriage), p." *Jurnal Lentera: Kajian Keagamaan, Keilmuan Dan Teknologi* 17, no. No 1 (2018), p. 43.

⁶⁰ Andi Muhammad Akmal et al., "Legal Solutions for Domestic Violence in Unregistered Marriages in Indonesia: Integrating Maqāṣid al-Sharī'ah," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024), p. 772, <https://doi.org/10.22373/ujhk.v7i2.25971>.

reason and thoughts properly. (4) Maintaining the offspring; however, offspring born from couples of different religions, it is undoubtedly challenging to hope to become *khalifa fil-'ard* (bearer of Allah's trust on earth). Lastly, (5) Maintenance of properties (assets), someone who marries somebody from a different religion indeed cannot inherit from each other. Then how can they maintain property when they cannot inherit from each other?⁶¹

Fauzi et al. argue that MUI forbids marriage between religions due to its contradiction to the *maqāṣid al-Sharī'a*'s perspectives. It could not preserve the religion since MUI issued its fatwa for a peaceful married life in the future. Al-Marakeby (2025), when elaborating on the meaning of (*ḥifẓ al-dīn*), preserving the religion in the framework of *maqāṣid al-Sharī'a*, cited Al-Attas, who connected the word (*dīn*) to the semantic Qur'an's meaning in the relatedness of the human common good foundation, as the meaning of obligation. It means that humans are naturally involved and obliged in the judgement (*daynūna*) and conviction (*idāna*). Therefore, they need a ruler to govern their religion (*madīna*), not merely to be concerned about their spiritual belief, but also to provide them with good social order encompassing the worldly and spiritual aspects of their life.⁶² Hence, interfaith marriage was not in line with *maqāṣid al-Sharī'a* for the point of (*ḥifẓ al-dīn*), due to its contradiction to the meaning of judgement-conviction, and the need for a ruler to govern here actually refers to the return to the submission to One God. Therefore, Muslims should follow the fatwa. It also conflicts with our souls because the differences in belief will disunite the spouse sooner or later, distracting the soul and mind. Furthermore, the family plays a significant role in Islamic society by educating children about religious teachings that serve as guidance for life.⁶³ If the spouses come from different religious backgrounds, it leads to confusion in the children's perception as a result of the mixture of beliefs from the interfaith marriage relationship.

Besides, it could not preserve the offspring and property due to the differences in belief; they could not even inherit the assets owned by the parents. Hence, the core objective of Sharia, which is also called *maqāṣid al-Sharī'a*, is an effort by the Islamic legal tradition to protect and promote these fundamental values, namely 1) life, 2) intelligence, 3) reputation or dignity, 4) lineage and 5) property. In this case, the MUI fatwa regarding the prohibition of interfaith marriages is a positive legal order which is a by-product of Fiqh. Essentially, it is part of the sharia, which

⁶¹ Ahmad Fauzi et al., "Analisis Nikah Beda Agama Dalam Perspektif Maqashid Syari'ah," *Madania Jurnal Ilmu-Ilmu Keislaman* 13, no. 1 (2023), p. 80–83.

⁶² Muhammad al-Marakeby, "Regrounding Maqāṣid Al-Sharī'a, the Quranic Semantics and Foundation of Human Common Good, Written by Mohamed El-Tahir El-Mesawi," *Journal of Islamic Ethics*, January 15, 2025, p. 1–2, <https://doi.org/10.1163/24685542-20240016>.

⁶³ Tengku Sarina Aini Binti Tengku Kasim et al., "Family Influence on Female's Blood Education in the Context of Islamic Practice in Malaysia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024), p. 626, <https://doi.org/10.22373/ujhk.v7i2.26252>.

aims to provide immunity and eternity for household life.⁶⁴ The statement that positive legal commands are not a by-product of Fiqh is, in fact, incorrect. Indeed, it is part of the sharia, especially if it fulfills the five *maqāṣid al-Sharī'a*, which were previously discussed in this paper.

Conclusion

The main finding of this study is that the prohibition on marriage between Muslims and female *ahlul-kitāb* represents a form of affirmation of adherence to the Shafi'i school of thought, rooted historically before the colonial era. Therefore, to protect and create balance in Muslim society, a positive change in discourse must be implemented by reaffirming through the clear rulings. The Shāfi'i's school of thought, which is adhered to by the majority of Indonesian Muslims, puts forward Fiqh law about "attracting benefits and preventing damage," which caused the Indonesian Ulema Council (MUI) to issue its fatwa 4/MUNAS VII/MUI/8/2005 concerning the prohibition of marriage between different religions. The writer argues that this law is a kind of justification that confirms Indonesians as Shāfi'i followers, which lies beneath its ulama as the Shāfi'i madhab preservers. Apart from that, interfaith marriages also conflict with the five concepts of *maqāṣid al-Sharī'a*: (1) maintenance of religion, (2) balance of soul, (3) maintenance of 'aql (reason), (4) maintenance of offspring, and (5) maintenance property (assets). Besides, the perspective of "*Saad az-Zari'ah*," where the benefit (*maṣlaḥa*) is more important than the damage (*mafsada*), also supports the argument in this issue. Even though based on the other three madhabs rules permit interfaith religions, particularly for Muslim males, to marry the scripture females, the Indonesian Ulema Council (MUI) has released its controversial fatwa due to the protection and maintaining the balance in society. The limitation of this study, it only focuses on the issue of interfaith marriage based on the Marriage Law No. 1 of 1974, which was affected by the issued fatwa 4/MUNAS VII/MUI/8/2005. However, another study on the increased case of interfaith marriage between female Muslims and non-Muslim males due to its relevancy, according to *Fiqh al-Wāqi'*, is proposed and encouraged for further research. The fatwa released by MUI on this matter and the historical approach of Shāfi'i's school of thought, the prohibition of marriage between Muslim males and female *ahlul-kitāb* concerned more with maintaining the balance and virtue in the society through the preservation of the Shāfi'i's madhab loyalty by Muslims in Indonesia which existed a long time ago.

⁶⁴ Khaled Abou El Fadl et al., *Routledge Handbook of Islamic Law*, ed. Khaled Abou El Fadl et al. (Routledge, 2019), p. 22.

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